



Western Australia

## **Esperance Lands Agreement Act 1960**

Compare between:

[01 Nov 1960, 00-a0-05] and [15 Dec 2003, 00-b0-07]



Western Australia

## **Esperance Lands Agreement Act 1960**

**An Act to ratify an agreement made between The Honourable the Premier, on behalf of the State and American Factors Associates, Limited and Arcturus Investment & Development Ltd.**

*[Assented to 1 November 1960.]*

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. Short title**

This Act may be cited as the *Esperance Lands Agreement Act 1960*.

**2. Agreement ratified**

The Agreement made the twenty-first day of September, one thousand nine hundred and sixty, between The Honourable David Brand, Premier of the State on behalf of the State, and American Factors Associates, Limited and Arcturus Investment & Development, Ltd, a copy of which agreement is set out in the Schedule to this Act, is hereby ratified.

## **Schedule**

THIS DEED made this 21st day of September, One thousand nine hundred and sixty.

BETWEEN the Honourable DAVID BRAND M.L.A. the Premier of the State of Western Australia contracting for and on behalf of the said State and the Government and Instrumentalities thereof from time to time (hereinafter referred to as “the State”) of the one part and

AMERICAN FACTORS ASSOCIATES, LIMITED a corporation organised under the laws of the State of Delaware United States of America and ARCTURUS INVESTMENT & DEVELOPMENT, LTD a corporation organised under the laws of Canada (hereinafter called “the Assignee”) of the second part collectively acting for and on behalf of a partnership to be registered under the provisions of the *Limited Partnership Act 1909* of the State of Western Australia to be called ESPERANCE LAND & DEVELOPMENT COMPANY consisting of companies incorporated in Australia the United States of America or England.

### Interpretation

In this deed unless the context otherwise requires the following terms have the following meanings

“**Assignor**” means Esperance Plains (Australia) Pty Ltd a company incorporated in Western Australia.

“**Original Agreement**” means the deed dated the 19th November 1956 made between the State of the one part and the Assignor of the other part a copy of which is annexed hereto and marked with the letter “X.”

Unless otherwise specifically provided in this Deed or inconsistent with the context terms used herein which are defined in the Original Agreement shall have their defined meanings.

WHEREAS

(a) By the Original Agreement the State agreed upon application from time to time by the Assignor and subject to the performance by the Assignor of its obligations under that agreement to grant to the Assignor an estate in fee simple in parcels of certain land therein described up to a total of approximately 1,500,000 acres of vacant Crown land to be selected by the Assignor from the areas delineated and edged in green on the plan thereunto annexed and marked with the letter "A."

(b) Pursuant to the Original Agreement the Assignor applied for and was granted an estate in fee simple of Neridup Location 12 comprising 61,536 acres and hachured green on the plan hereunto annexed and marked "Y" and applied for Permits to Occupy Neridup Location 15 (comprising 9,100 acres) and Neridup Location 16 (comprising 39,300 acres) hachured yellow on the said plan marked "Y."

(c) By various deeds the lands hachured red on the plan annexed hereto and marked "Y" (comprising 276,519 acres) were released by the Assignor to the State and have been declared open by the Governor for selection under the provisions of the *Land Act 1933-1958* and such lands are no longer subject to the Original Agreement.

(d) It has been agreed by and between the parties hereto that the area west of the rabbit proof fence Neridup Location 22 and a portion of Neridup Location 21 (being the areas hachured blue on the plan hereunto annexed and marked "Y") shall be excluded from this and the Original Agreement and released to the State.

(e) Default was made by the Assignor in the performance of its obligations under the Original Agreement and such default still continues.

(f) By deed and supplemental deed both of even date hereto made between the Assignor of the one part and the Assignee of the other part the Assignor with the consent of the State (testified to by its execution hereof) assigned to the Assignee the Original Agreement and the rights and interests and the benefits and advantages of the Assignor thereunder and therein on the terms and conditions therein mentioned.

(g) It is intended that on the registration of the limited partnership Esperance Land & Development Company that American Factors Associates, Limited and Arcturus Investment & Development Ltd with the consent of the State (testified to by its execution hereof) shall assign to the said partnership the Original Agreement and the rights and interests and the benefits and advantages of the Assignee thereunder and therein on the terms and conditions mentioned in the said deed and supplemental deed of even date hereto made between the Assignor of the one part and the Assignee of the other part whereupon the said partnership shall become the Assignee of the Original Agreement to the extent and on the terms and conditions mentioned in the said deed and supplemental deed of even date hereto and shall assume and be solely responsible for all obligations of an assignee of the Original Agreement as amended by this Deed.

(h) It is acknowledged by and between the parties hereto that it is now impracticable to carry out the terms of the Original Agreement within the times therein specified but as rapidity of development envisaged by the Original Agreement is unlikely to be accomplished by individual settlers it is considered to be in the interests of the State that the large scale and rapid development of the major portion of the area should be proceeded with by the Assignee.

(i) The parties hereto have agreed that the Original Agreement shall be amended and added to as hereinafter mentioned. Provided that nothing herein contained shall prejudice or affect the rights and obligations of the parties to the Original Agreement under that Agreement in relation to Neridup Locations 12, 15 and 16.

NOW THIS DEED WITNESSETH and it is hereby agreed and declared by and between the parties hereto as follows:

1. The Original Agreement shall be amended and added to as follows:
  - (a) delete the definitions of “the first year” and “year” in clause 1.
  - (b) delete the definition of “development” in clause 1 and insert in lieu thereof

“ ‘Development’ means the erection of fencing and buildings where necessary and the establishment of necessary water supplies on each holding and the laying down to pasture of an area of not less than thirty-three and one-third per cent. of the area of each holding with a minimum of 700 acres.”

- (c) delete all words after “encumbrances” in clause 2(1) and insert in lieu thereof

“of such areas as may be selected by the Assignee from the areas totalling approximately 1,432,165 acres of vacant Crown land in the Esperance Downs area to the East and West of Esperance being the lands delineated and edged in green on the plan annexed to the Supplementary Deed dated the 21st day of September, 1960 and marked “Y” other than the lands hachured green yellow red and blue on the said plan.”

- (d) delete subclause (3) of clause 2 and insert in lieu thereof

“ (3) Subject to the proviso to clause 4(A) the areas of land which may be selected and applied for by the Assignee shall extend to all the land delineated and edged in green on the aforesaid plan hereunto annexed and marked “Y” other than the land hachured green yellow red and blue.”

- (e) insert at the commencement of clause 3 the words and figures “(1) Subject to the provisions of clause 4(A) hereof.”
- (f) delete subclause (c) of clause 3.
- (g) add the following subclause at the end of clause 3: —

“ (2) Subject to the reservations referred to in the Permit to Occupy the State shall issue a Crown Grant in the form prescribed in the Third Schedule to the *Land Act 1933-1958* upon payment by the Assignee of the sum of 4/- per acre for the land included in the said Grant and upon

the Assignee satisfying the State that a sum equivalent to at least £1. 4. 0. per acre (including survey fee) has been expended by the Assignee in the development of the selected parcel.”

(h) delete clause 4 and insert in lieu thereof the following clauses: —

“ 4. (i) The Assignee shall select and apply for the following minimum areas: —

- (a) By the 31st December 1960 50,000 acres
- (b) By the 31st December 1961 a total of 150,000 acres
- (c) By the 31st December 1962 a total of 250,000 acres
- (d) By the 31st December 1963 a total of 350,000 acres

(ii) The Assignee undertakes that it will expend in the purchase of the said land and in the development thereof excluding administrative expenses incurred in Australia or overseas

- (a) Prior to the 31st December 1960 an amount of £12,500
- (b) Prior to the 31st December 1961 a total of £25,000
- (c) Prior to the 31st December 1962 a total of £250,000
- (d) Prior to the 31st December 1963 a total of £500,000

4. (A) (i) The Assignee shall be entitled to apply for an area not exceeding 350,000 acres at any time prior to the 31st December 1963 but shall not be entitled to select and apply for further land until it has expended as abovementioned a sum of not less than £500,000.



(ii) Provided sufficient land the subject of this agreement remains at the time and that the Assignee has expended in the manner hereinbefore mentioned the amount set out in the first column hereof then the Assignee may at any time prior to the date specified in the second column hereof select and apply for the area set out in the third column hereof including areas previously selected.

First Column	Second Column	Third Column Acres
£500,000	31st December, 1964	450,000
£700,000	31st December, 1965	550,000
£900,000	31st December, 1966	650,000
£1,100,000	31st December, 1967	750,000
£1,300,000	31st December, 1968	850,000
£1,500,000	31st December, 1969	950,000
£1,700,000	31st December, 1970	1,050,000
£1,900,000	31st December, 1971	1,150,000
£2,100,000	31st December, 1972	1,250,000
£2,300,000	31st December, 1973	1,350,000
£2,500,000	31st December, 1974	1,450,000 or such lesser amount as remains.

Provided that if by any date specified in the second column above mentioned (or any extension thereof as hereinafter mentioned) the Assignee has failed to select and apply for the area set out in the third column above mentioned opposite to that date the State may by notice in writing to the Assignee at any time after 6 months after that date select the whole or part of so much of the area as the Assignee has so failed to select and apply for and the area so selected by the State shall thereupon become excluded from this and the Original Agreement and the areas shown in the third column shall be reduced accordingly.

(iii) If because of unseasonable conditions or for economic or other reasons the development of the lands the subject of this agreement at the rate envisaged by this agreement does not appear justified then the Assignee may request the State to extend the dates mentioned in the second column above mentioned for such period as may be considered desirable and if such request is refused either wholly or in part by the State then such matter shall be referred to arbitration in accordance with the provisions of clause 21 hereof.

\_\_\_\_\_ | If the arbitrator shall hold that the refusal of the State to accede to the request for such extension of time was justified then the Governor may declare that lands the subject of this agreement to be selected by the State equivalent in area to the area which the Assignee failed to select and apply for in accordance with the provisions of this agreement shall be open for selection under the provisions of the *Land Act 1933-1958*.”

“ 4. (B) For the purposes of clauses 3 (2), 4 and 4 (A) a certificate by the auditors of the Assignee as to the amount expended by the Assignee in the manner hereinbefore mentioned shall be accepted by the State provided such auditor has been approved by the State. Approval shall not be withheld if the auditor of the Assignee is a member of the Institute of Chartered Accountants.”

- (i) at the beginning of the second sentence in clause 5(b) insert the following words “Except with the permission of the Minister for Lands.”
- (j) insert after “reserve” in clause 7 (b) the words “for forestry purposes.”
- (k) delete clause 15.
- (l) delete the words in clause 19 “for a period of not less than 6 months” and add at the end of the clause 19 the words “including unseasonable conditions or overall economic conditions which do not justify the rapidity of development envisaged by this agreement.”

- (m) amend the form of Permit to Occupy set out in the Schedule by adding the following clause thereto:

“This Permit to Occupy shall not be assigned or transferred without the consent in writing of the Minister.”

2. Without prejudice to the rights of the State against the Assignor in regard to any default of the Assignor in relation to lands granted to or the subject of Permits to Occupy issued to the Assignor the State hereby waives any default (whether notice shall have been given in respect thereof or not) of the Assignor under the Original Agreement in relation to lands or rights assigned to the Assignee as aforesaid and hereby releases the Assignor from and undertakes to look only to the Assignee for the performance of the duties and obligations of the Assignor in relation to lands or rights assigned by the Assignor to the Assignee.

3. The area west of the rabbit proof fence, Neridup Location 22 and a portion of Neridup Location 21 (all of which are hachured blue on the plan marked “Y”) are hereby excluded from this and the Original Agreement.

4. The State has granted Permits to Occupy in respect of Neridup Locations 15 and 16 to the Assignor under the Original Agreement.

5. Notwithstanding that this agreement has not been ratified by Parliament Permits to Occupy shall be granted by the State to the Assignee of such areas as the Assignee may select and apply for under the Original Agreement prior to the 31st December 1960 not exceeding 350,000 acres. Any Permit to Occupy so granted shall be subject to the terms of this agreement and in particular to clause 3 of the Original Agreement as amended by this agreement and to clauses 4, 4 (A) and 4 (B) as inserted by this agreement.

Any such areas shall be deemed and taken to be part of the said total area of 350,000 acres referred to in clause 4 (A) inserted by this agreement.

**Esperance Lands Agreement Act 1960**  
**Schedule**

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6. Notwithstanding the matters referred to in recital (g) of this deed the Assignee shall be jointly and severally liable hereunder in the same way as if each had contracted on its own account. Provided that on the formation and registration under the Limited Partnership Act of the said partnership Esperance Land & Development Company and the adoption of this deed by the said partnership American Factors Associates, Limited and Arcturus Investment & Development, Ltd shall cease to have any interest herein and the liability of the said companies shall forthwith cease and determine but without prejudice to the obligations of American Factors Associates, Limited and Chase International Investment Corporation under the undertaking endorsed on this deed. The partnership shall not be deemed to have adopted this deed within the meaning of this clause until it has executed a deed of covenant with the State assuming all liabilities and obligations hereunder as from the date of this deed to the same effect as if it had been named in and had executed this deed.

7. Except as otherwise provided in clause 5 hereof this deed shall not be binding upon either party hereto unless it is ratified by both Houses of Parliament by the 31st October 1960 or such later date as may be agreed to by the parties hereto.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first aforesaid.

Signed sealed and delivered by THE  
HONOURABLE DAVID BRAND in the  
presence of  
Stewart Bovell

DAVID BRAND  
[LS]

AMERICAN FACTORS  
ASSOCIATES, LIMITED.

By J.E. EDNIE  
Vice President

Attest:  
Frances A. Bougher

By M.A. PIETSCHMAN  
Secretary  
[LS]

ARCTURUS INVESTMENT &  
DEVELOPMENT, LTD

By F. KRUG  
Director  
[LS]

Attest:

G.L. Gilker  
Secretary

In order to induce the parties to the foregoing deed to execute and deliver the same and in consideration of the execution and delivery thereof the undersigned AMERICAN FACTORS ASSOCIATES, LIMITED a corporation organised under the laws of the State of Delaware United States of America having an office at Fort and Queen Streets Honolulu Hawaii and CHASE INTERNATIONAL INVESTMENT CORPORATION a corporation organised under the laws of the United States of America having its principal office at 18 Pine Street New York New York hereby jointly and severally agree with the State and the Assignee under the foregoing deed that the Assignee will have funds of not less than £A1,500,000 available in Western Australia for carrying out its obligations as assignee of the Original Agreement referred to in the foregoing deed which funds will consist of moneys paid or agreed to be paid to the Assignee as contributions to the capital of or advances to the Assignee provided that if the foregoing deed has not been ratified by both Houses of the Parliament of the State of Western Australia by the 31st October 1960 the agreement of the undersigned hereunder will be that the Assignee will have available in Western Australia as aforesaid funds sufficient to enable the Assignee to discharge its obligations under the aforesaid Original Agreement with respect to lands as to which Permits to Occupy are granted on or before 31st October 1960. In this undertaking the term "Assignee" means the parties of the second part to the foregoing deed or the partnership Esperance Land & Development Company as the case may be.

AMERICAN FACTORS  
ASSOCIATES, LIMITED

By I.E. EDNIE

**Esperance Lands Agreement Act 1960**  
**Schedule**

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Vice President

By M.A. PIETSCHMAN  
Secretary  
[LS]

Attest:

Frances A. Bougher

CHASE  
INTERNATIONAL  
INVESTMENT  
CORPORATION

By WILLIAMS. MILLER  
Vice Pres  
[LS]

Attest:

Mortimer I. Palmer  
Secretary

“X”

THIS DEED made this 19th day of November One thousand nine hundred and fifty-six.

BETWEEN ALBERT REDVERS GEORGE HAWKE the Premier and Treasurer of the State of Western Australia contracting for and on behalf of the said State and the Government and Instrumentalities thereof from time to time (hereinafter referred to as “the State”) of the one part and

ESPERANCE PLAINS (AUSTRALIA) PTY. LTD. whose registered office is situate at 55 Saint George’s Terrace Perth in the said State (hereinafter referred to as “the Company” in which term shall be incorporated its successors and assigns) of the other part.

WHEREAS:

In January One thousand nine hundred and fifty-four a committee was appointed by the Government known as the “Esperance Downs Development Advisory Committee” to advise and report upon the special difficulties and problems associated with agricultural development of the area known as the Esperance Downs extending from approximately the No. 1 Rabbit Proof Fence on the west to approximately 50 miles east of Esperance and from the Coastline to a latitude about 10 miles north of Gibson.

On the third day of June One thousand nine hundred and fifty-five such committee presented its report to the Minister for Lands and Agriculture and from such report it appears that rapid and large scale development of the area cannot be accomplished except with the outlay of a large capital expenditure.

The Company being able to obtain the necessary capital for the purpose the State has offered to the Company and the Company has accepted the opportunity to effect the rapid and large scale development and settlement of the area upon and subject to the terms and conditions hereinafter mentioned.

#### Interpretation

1. In this Agreement unless the context otherwise requires the following terms have the following meanings: —

“**the Minister**” means the Minister for Lands of the State of Western Australia and the person acting in that capacity from time to time

“**holding**” means each unit of subdivided land within a parcel

“**parcel**” means the area of land selected by the Company and made the subject of a permit to occupy issued under clause 3 hereof

“**the first year**” means the period expiring on the thirty-first day of December One thousand nine hundred and fifty-seven

“**year**” means a calendar year

“**development**” means the erection of fencing and buildings where necessary and the establishment of necessary water supplies on each holding; and the laying down to pasture of an area of not less than fifty per cent. of each holding

“**developed**” and “**develop**” have corresponding meanings

“**developmental roads**” means 2 chain roads running approximately north and south at intervals of approximately 8 miles and east and west at intervals of approximately 10 miles having regard to topography and design

“**preliminary survey**” means the surveying of reserves for road or forestry purposes and the boundaries of the parcels as surveyed from time to time by or with the approval of the Surveyor General

#### Land

2. (1) Subject to this Agreement the State shall grant to the Company by Crown Grants in the form of the Third Schedule to the *Land Act 1933-1954* at a price of four shillings per acre plus survey fee as hereinafter mentioned an estate in fee simple free from encumbrances in areas totalling approximately One million five hundred thousand acres of vacant Crown land in the Esperance Downs area to the east and west of Esperance.

(2) Parcels shall be selected by the Company in the manner provided by and subject to the provisions of this Agreement but for the purpose of assisting the State to comply with its obligations under this Agreement and to provide services and amenities for inhabitants all selection and subsequent development of land under this Agreement is intended so far as practicable to be progressively eastwards and westwards from Esperance or to be of land contiguous to a parcel previously selected by the Company under this Agreement.



(3) The parcels shall be selected by the Company from the areas delineated and edged in green on the plan hereunto annexed and marked with the letter "A."

Selection of areas by Company

3. From time to time the Company shall notify the Minister in writing of its desire to select parcels (where possible) of not less than fifty thousand acres. Upon receipt of such notice the State shall in respect of the selected parcel:

- (a) within fourteen days issue to the Company a Permit to Occupy in the form set out in the first schedule hereto
- (b) as soon as possible cause the necessary preliminary surveys to be made
- (c) as soon as possible after the preliminary surveys have been completed but subject to the reservations referred to in the Permit to Occupy and upon payment of the sum of four shillings per acre by the Company issue to the Company a Crown Grant in the form prescribed in the Third Schedule to the *Land Act, 1933-1954*

Minimum areas

4. The Company shall select and apply for the following minimum areas: —

- (a) by the end of the first year an area of fifty thousand acres
- (b) by the end of the second year a total (including the area selected during the first year) of not less than one hundred and fifty thousand acres

- (c) by the end of the third year a total (including the areas selected during the first and second years) of not less than two hundred and fifty thousand acres
- (d) by the end of the fourth year a total (including the areas selected during the first three years) of not less than three hundred and fifty thousand acres

Provided that a total area of one million five hundred thousand acres more or less shall be selected and applied for by the Company prior to the thirty-first day of December One thousand nine hundred and sixty one.

Provided further that if at any time the Company is not *bona fide* proceeding with progressive development of the parcels already allotted to it the State shall not be bound to grant to the Company any further land under this Agreement until such default is rectified.

#### Development

- 5. Subject as hereinafter provided the Company undertakes:
  - (a) to proceed with the progressive and continuous development of parcels as soon as practicable after a permit to occupy has been issued
  - (b) within a period of ten years after a permit to occupy has been issued for a parcel to subdivide such parcel into holdings in accordance with plans of subdivision and to develop such holdings. The area of such holdings in parcels east of the Lort River shall be not less than one thousand acres nor more than two thousand acres and in areas west of the Lort River shall be not less than one thousand five hundred acres nor more than ten thousand acres according to rainfall and land classification but the larger holdings will generally be in the northern portion of the area west of the Lort River. The plans of subdivision shall in accordance with the *Land Act 1933-1954* be subject to approval by the Surveyor General

Where further experience of the area shows that adequate water supplies are difficult to establish or maintain in a particular area or where poison is found in a particular area in such quantities that it is difficult to eradicate or control the State may:

- (a) agree to exclude such areas wholly from the operations of this Agreement in which case the area shall be surrendered to the Crown and a refund made of the purchase price
- (b) agree to exclude such areas from the provisions of this clause
- (c) agree that the provisions of this clause shall be amended so as to extend the period of subdivision and development for a term not exceeding five years or
- (d) reduce the purchase price per acre to compensate the Company for the additional cost to the Company of the eradication or control of the poison or the provision of adequate water supplies

#### Disposal of subdivided farm

6. The Company agrees within a period of ten years after a permit to occupy has been issued for a parcel to have available for sharefarming lease or sale at least fifty per cent. of such parcel subdivided and developed as aforesaid. No lease or sharefarming agreement shall be entered into for a term exceeding five years. Any lease or sharefarming agreement of a holding entered into after the expiration of ten years following the issue of a permit to occupy for such holding shall give to the lessee or sharefarmer who is not in default an option of purchasing the land leased or sharefarmed on the expiration of the term at a price to be stated in the Agreement or determined by arbitration.

#### Surveys

7. (1) The preliminary surveys to be made by the State pursuant to clause 3 hereof shall provide for:

- (a) developmental roads of a width of two chains to be declared as public roads under the provisions of the *Road Districts Act 1911-1948* at intervals approximately 8 miles north and south and ten miles east and west
- (b) a reserve under the *Land Act 1933-1954* of a width or widths totalling three chains adjacent to such roads
- (c) areas of land required for townsites governmental or public utility or other public purposes.

(2) In addition to such preliminary surveys the State shall carry out or cause to be carried out all surveys requested by the Company in writing to enable the Company to subdivide each parcel selected by the Company as provided by clause 5 hereof. Each such request shall include or be in the form of a submission of a plan of subdivision for approval as to survey by the Surveyor General.

Such surveys shall provide for access roads of a width of not less than one chain to all holdings.

Such surveys shall be carried out by the State at its own cost and expense but the Company shall on demand pay to the State the cost thereof not exceeding one shilling per acre of the areas surveyed including the cost of the preliminary survey.

All such surveys shall be carried out by the State as soon as possible after a request has been made by the Company. The Company shall have the right to carry out its own surveys in cases where the State is unable to proceed with such surveys with reasonable despatch and the State absolves the Company from liability for survey fees in respect of lands surveyed by the Company as aforesaid.

On the completion of the subdivisional survey the Company shall execute all such documents as may be necessary to vest the access roads in the local authority of the district and the State shall vest in the local authority of the district

such portions of the reserves for forestry purposes as are necessary to give access to and egress from such access roads to developmental roads.

#### Roads

8. The State agrees at its own cost and expense: —
- (a) To construct or cause to be constructed and to authorise the Commissioner of Main Roads to maintain or (with funds accruing to the local authority of the area from land rates or vehicle license fees) to cause to be maintained in a satisfactory condition all developmental and access roads
  - (b) To construct or cause to be constructed and to authorise the Commissioner of Main Roads to maintain in a satisfactory condition a road from Albany to Esperance for the purpose of carrying the traffic to and from the district as development proceeds

The Commissioner of Main Roads is authorised from time to time to construct all roads with such despatch as to ensure that the rate of development planned by the Company is not retarded by the lack of suitable roads.

#### Subsidiary works

9. The parties acknowledge that as development Subsidiary proceeds and sufficient areas come into production it is desirable that a fertiliser works should be erected as soon as the quantities of fertiliser used or likely to be used in the district make such works an economic proposition. A killing works will also be required as production increases.

Until a study has been made of suitable areas from a town planning point of view it is not possible to decide on the most suitable location for either of such works.

The state accordingly agrees that it will as soon as practicable set aside for the Company or its nominees in the vicinity of Esperance: —

- (a) land which the parties hereto agree is suitable for the erection and operation of a fertiliser works and
- (b) land which the parties hereto agree is suitable for the erection of a killing works and for the discharge of waste products and the provision of holding yards

The State shall:

- (a) Within twelve months of the receipt of a notice in writing from the Company that it or its nominee proposes to erect a fertiliser works to —
  - (i) transfer or grant to the Company or its nominee at a reasonable price the land so set aside for a fertiliser works
  - (ii) make available to the Company at a reasonable cost adequate supplies of water to the site of such proposed works or ensure that the Company may otherwise obtain such supplies
  - (iii) provide adequate rail and road facilities to such site from existing rail and road facilities respectively
- (b) Within twelve months of the receipt of a notice in writing from the Company that it or its nominee proposes to erect a killing works
  - (i) transfer or grant to the Company or its nominee at a reasonable price the land so set aside for a killing works
  - (ii) make available to the Company or its nominee at a reasonable cost adequate supplies of water to the site of such proposed

works or ensure that the Company may otherwise obtain such supplies

- (iii) provide adequate rail and road facilities to such site from existing rail and road facilities respectively

AND the Company agrees:

- (a) to erect a fertiliser works on the land so provided therefor by the State within a period of two years from the date of such provision
- (b) to erect a killing works on the land so provided therefor by the State within a period of two years from the date of such provision

#### Harbour

10. The State intends from time to time but without assuming obligation to develop and make all such necessary additions and improvements to the harbour facilities (including jetty) at Esperance as are reasonably justified by the actual and prospective development of the district and to make and maintain such harbour works in a satisfactory and efficient state.

#### Trees

11. It is acknowledged by both parties that the planting of trees on forestry reserves adjoining main roads and on farms is desirable. The State intends from time to time to proceed with the cultivation and planting of trees on such forestry reserves according to the location and needs of particular areas.

The Company will confer with the Conservator of Forests with the object of agreeing on a plan for the systematic planting of trees on land held or controlled by the Company as development proceeds.

The Company shall as far as practicable preserve natural growth and trees which are not harmful to agriculture or pasture and encourage settlers in the planting of suitable trees.

#### Settlers

12. The Company shall: —
- (a) endeavour where possible to settle the said land with people from the Commonwealth of Australia and the United States of America and if necessary from European countries
  - (b) if possible ensure that at least fifty per cent. of such settlers are from the Commonwealth of Australia
  - (c) confer in the selection of settlers with a committee appointed by the State for that purpose the intention being that not more than one holding shall be allotted to any one person

#### Residential land

13. It is anticipated that the Company will require substantial residential areas of land for the erection of homes. The State agrees to make available to the Company as may be mutually agreed between the parties hereto suitable land (not exceeding in all ten thousand acres) of vacant Crown land not being an “A” class reserve on the coast adjacent or near to either or both the eastern and western areas for residential purposes and to sell such land to the Company or its nominees under section 45A of the *Land Act 1933-1954* at the then current valuation and subject to relevant State laws.

The provisions of this Agreement relating to notices and surveys shall apply to the land the subject of this clause and the State will provide reasonable road access to any land sold to the Company under this clause.



Finance

14. The State shall be under no obligation to make finance available to the Company.

15. The Company agrees to use a Banking Institution sponsored by the State for the lodgment and maintenance of accounts and the transfer of moneys from the United States of America.

State experiments and investigations

16. The State at present maintains a research and experimental station at Esperance Plains. The State will make all information and results from the research and experiments of such station readily available to the Company and the departmental officers at such station shall at all reasonable times be available for advice and consultation with officers of the Company.

Machinery

17. The Company intends to use certain imported machinery which is not obtainable in the State of Western Australia but where practicable the Company shall purchase and use machinery implements and materials manufactured or produced in the State of Western Australia.

Transport Restrictions

18. It is hereby agreed that the provisions of the *State Transport Co-ordination Act 1933-1953* or any amendment thereof will be administered so as not unduly to interfere with or hamper the transporting of goods to or from the said land.

Default

19. If at any time the Company has been in default under this Agreement for a period of not less than six months the State may give to the Company a notice in writing specifying the matter or matters in respect of which the Company is in default and specifying a period not being less than one year within which the Company must remedy the default and unless within the period specified in the notice the Company remedies the default to the satisfaction of the Minister the State will not after the expiration of the period specified be bound by the provisions of this Agreement.

The Company shall not be taken to be in default under this Agreement to the extent that it has been prevented from or hindered in carrying out any provisions of this Agreement by any cause reasonably beyond the Company's control.

Assignment

20. The Company shall have the right with the consent in writing of the State to assign or otherwise dispose of this Agreement or any interest herein and such consent shall not be arbitrarily or unreasonably withheld; but such consent shall not be required in the case of an assignment to a Company in which the Company holds more than thirty per centum of the shares.

Arbitration

21. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed variation thereof or as to the construction of this Agreement or any such variation or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed between the parties in terms of this Agreement shall in default of agreement between the parties be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895* and its amendments for the time being in force.

#### Notices

22. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister and forwarded by prepaid post to the Company at its registered office in the said State and by the Company if signed on behalf of the Company by the managing director general manager secretary or attorney of the Company and forwarded by prepaid post to the Minister 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.

#### Sub-contracting

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

#### Variation

24. Any obligation or right under the provisions of or any plan referred to in this Agreement may from time to time be cancelled added to varied or substituted by agreement in writing between the parties so long as such cancellation addition variation or substitution shall not constitute a material or substantial alteration of the obligations or rights of either party under this Agreement.

#### Interpretation

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

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first aforesaid.

The Schedule referred to

PERMIT TO OCCUPY RURAL LAND

No.

WHEREAS by deed dated the  
day of One thousand nine hundred and  
fifty-six made between Albert Redvers George Hawke the Premier and Treasurer  
of the State of Western Australia contracting for and on behalf of the said State  
and the Government and Instrumentalities thereof from time to time of the one  
part and Esperance Plains (Australia) Pty. Ltd. of the other part it is provided that  
subject to the said agreement the State should grant to the Company by Crown  
Grants in the form of the third schedule to the *Land Act 1933-1954* at a price of  
four shillings per acre plus survey fees therein mentioned an estate in fee simple  
free from encumbrances in areas totalling approximately 1,500,000 acres of  
vacant Crown land in the Esperance Downs area to the east and west of  
Esperance.

AND WHEREAS the Company has selected and applied to the Minister  
for Lands for the grant to the Company of the area mentioned in the schedule  
hereto but such grant cannot be issued until the necessary surveys have been  
completed and the Grant prepared.

NOW KNOW ALL MEN AND THESE PRESENTS WITNESS  
that I THE MINISTER FOR  
LANDS for the said State DO HEREBY ACKNOWLEDGE that ESPERANCE  
PLAINS (AUSTRALIA) PTY. LTD. is entitled to a Grant free from  
encumbrances of the land described in the schedule hereto subject to survey and  
exclusion therefrom of roads forest reserves and other land required for town  
sites, governmental and public utility or other public purposes as provided by the

Agreement hereinbefore recited and do hereby authorise and empower and permit the said Company and any person lawfully claiming under it at any time after the date thereof (but subject as aforesaid and to the terms of the said agreement) to enter upon the said tract or parcel of land and to hold and enjoy the same for its use and benefit pending the issue of a Crown Grant in respect of the same subject to the provisos contained in the prescribed form of Crown Grant for rural land under the *Land Act 1933-1954* and subject to the exclusion therefrom at the completion of the surveys of all lands required for townsites roads forest reserves and governmental and public utility and other public purposes.

THE SCHEDULE

Given under my hand at Perth on the  
day of  
and fifty-six. One thousand nine hundred

By order of the Minister for Lands

Signed sealed and delivered by  
THE HONOURABLE ALBERT  
REDVERS GEORGE HAWKE  
in in the presence of:

}

A.R.G. HAWKE  
[LS]

JOHN T. TONKIN.

The Common Seal of ESPERANCE  
PLAINS (AUSTRALIA) Pty. Ltd)  
was hereunto affixed in the presence  
of:

}

Director  
ALLEN CHASE  
Director  
WILLIAM A. GUNN  
Secretary  
A.J. ETHELL  
[LS]



**Notes**

- <sup>1.</sup> This is a compilation of the *Esperance Lands Agreement Act 1960* and includes all amendments effected by the other Acts referred to in the following Table.

**Compilation table**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Esperance Lands Agreement Act 1960</i>	36 of 1960	1 Nov 1960	1 Nov 1960

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[This Act was repealed by the Statutes \(Repeals and Minor Amendments\) Act 2003 s. 5 \(No. 74 of 2003\) as at 15 Dec 2003 \(see s. 2\)](#)

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