

1961.]

*Iron Ore (Tallering Peak)
Agreement.*

[No. 49.]

IRON ORE (TALLERING PEAK) AGREEMENT.

10° Elizabeth II., No. XLIX.

No. 49 of 1961.

AN ACT to approve, ratify and confirm a certain agreement relating to iron ore pyrites and concentrates; to provide for carrying the agreement into effect and for incidental and other purposes.

[Assented to 23rd November, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and 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 *Iron Ore (Tallering Peak) Agreement Act, 1961.* Short title.

Interpreta-
tion.

2. In this Act unless the contrary intention appears—

Cl. 8. 4
No. 30 of 1918.

- “land” includes any estate or interest in land;
 “the agreement” means the agreement a copy of which is contained in the Schedule to this Act;
 “the State” includes its instrumentalities.

Agreement
approved.

3. (1) The agreement is approved, ratified and confirmed.

(2) Without affecting the operation of subsection (1) of this section and notwithstanding any other Act—

- (a) the provisions of subclauses (1), (3), (4) and (5) of clause five and clauses fourteen and fifteen of the agreement have effect as if those provisions were repeated in and enacted by this Act; and
 (b) the State shall not be prevented by the operation of any Act or by-law or regulation made thereunder from fulfilling its obligations under and in accordance with the provisions of the agreement.

Power to
acquire.

4. (1) The State may—

- (a) by agreement with the owner; or
 (b) by compulsory process as provided in this section,

acquire any land that is reasonably required by either party to the agreement as defined therein, for any purpose contemplated by the agreement.

(2) Any land referred to in subsection (1) of this section may be set apart, taken or resumed as for a public work pursuant to the Public Works Act, 1902, as if the land were required for a public work within the meaning of that Act and, when so set apart, taken or resumed, shall be used and disposed of in accordance with and for the purposes of the agreement.

(3) Subject to subsection (2) of this section, the provisions of the Public Works Act, 1902, apply with such adaptations as are necessary in all respects as if the land were required for a public work authorised pursuant to the provisions of that Act.

SCHEDULE.

AN AGREEMENT under Seal made the tenth day of August One thousand nine hundred and sixty-one BETWEEN THE HONOURABLE DAVID BRAND 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 one part AND WESTERN MINING CORPORATION LIMITED a Company duly incorporated under the Companies Statutes of the State of Victoria and having its principal office in that State at 360 Collins Street Melbourne and having its registered office in the State of Western Australia at 55 Macdonald Street Kalgoorlie (hereinafter referred to as "the Company" which term shall include its successors and permitted assigns) of the other part.

1. (1) Except for the following provisions (in this clause hereinafter called "the excepted provisions") that is to say this clause clauses 3 and 4 subclauses (1) and (2) of clause 5 subclause (3) of clause 6 and clauses 12, 21, 22, 23 and 24 the provisions of this Agreement shall not come into operation unless a Bill to ratify this Agreement is passed by the Parliament of Western Australia and comes into operation as an Act before the 1st day of February, 1962.

Ratification and Operation.

(2) The State shall as soon as conveniently may be introduce such a Bill in the said Parliament and such Bill shall—

- (a) provide that this Agreement shall by the Act being the ratifying Act as hereinafter defined be approved ratified and confirmed;
- (b) provide that subclauses (1) (3) (4) and (5) of clause 5 and clauses 14 and 15 of this Agreement shall take effect as though the same had been repeated in and expressly enacted in the Act being the Ratifying Act as hereinafter defined;

- (c) make provision for the compulsory or other acquisition of such land and rights interests and easements including easements relating to the laying and maintenance of pipes and the pumping of water and the installation and operation of the conveyor system referred to in clause 8 hereof as may be reasonably required by either party for any purpose contemplated by this Agreement; and
- (d) provide that no Act regulation or by-law shall operate so as to prevent the State from fulfilling its obligations under this Agreement in accordance with and subject to the provisions hereof.

(3) If however the Bill referred to in subclause (1) of this clause is not passed or does not come into operation as an Act as therein provided the following clauses of this Agreement shall not operate or shall cease to operate and neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing arising out of or done or performed under the excepted provisions of this Agreement.

Interpreta-
tion.

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

“associated company” means—

- (a) any company incorporated in the Commonwealth of Australia in which the Company holds not less than 20 per centum of the issued capital;
- (b) any company of which the Company is a subsidiary company; and
- (c) any company which is a subsidiary company of the company referred to in paragraph (a) of this definition

and of which the Company gives notice to the State;

“mineral leases” means the mineral leases or any mineral lease granted to the Company under subclause (3) of clause 5 hereof;

“Minister” means the Minister of the Crown to whose administration the Mining Act 1904 is for the time being committed and includes the Minister for the Crown for the time being acting as Minister for Mines or discharging the duties of his office;

“month” means calendar month;

“person or persons” includes bodies corporate;

"Railways Commission" means the Western Australian Government Railways Commission established pursuant to the Government Railways Act, 1904;

"ratifying Act" means the Act referred to in subclause (1) of clause 1 hereof;

"the said State" means the State of Western Australia;

"subsidiary company" means any company incorporated within the Commonwealth of Australia which is a subsidiary company for the purposes of section 130 of the Companies Act, 1943;

"ton" means a ton of 2240 pounds weight.

Any reference in this Agreement to an Act means that Act as amended from time to time and includes any Act passed in substitution for that Act and any regulations or by-laws made and for the time being in force under any such Act.

3. As from the date the State grants to the Company the right of occupancy of Temporary Reserve No. 1972H herein-after mentioned the Company will—

Company to
prospect
and test
and survey.

(a) commence to prospect for iron ore within the boundaries of the Temporary Reserve and will diligently proceed with such prospecting and for this purpose will sink necessary bores and carry out necessary tests in order to discover the tonnages and grades of iron ore within the said boundaries and the Company will keep the State fully informed in writing in each month after the month of August and until and including the month of January 1962 as to its progress and the work done and the tests carried out under this paragraph and the results thereof;

(b) commence to and diligently proceed with a comprehensive and detailed survey of a practicable route to be approved by the Railways Commission for the proposed railway referred to in clause 6 hereof.

4. (1) At any time prior to the first day of February 1962 the Company may give to the State notice in writing that the Company has satisfied itself that the Temporary Reserve contains iron ore of tonnages and grades capable of economic recovery and marketing by the Company.

Notice date.

(2) The notice given under subclause (1) of this clause shall have annexed to it two copies of a plan of survey of the route of the railway referred to in clause 6 hereof.

submitted and advise the Company in writing what further proof (if any) the State requires which further proof the Company shall use reasonable endeavours and speed to supply.

(6) If and when the State is satisfied with the proof submitted the State shall forthwith give notice in writing to the Company accordingly. The date on which the State gives the last mentioned notice is in this Agreement called "the notice date". The State however shall not withhold the giving of its notice to the Company except on reasonable grounds and without affording to the Company a reasonable period within which to produce further proof (if any) as required by the State. If however the State decides not to give such notice it shall forthwith notify the Company accordingly and unless the Company within thirty (30) days thereafter refers the question whether the Company has produced proof that it has entered into contracts as aforesaid to arbitration or if having so referred such question the question is decided against the Company then the consequences set out in subclause (4) of this clause following the failure of the Company to give the notice therein referred to shall follow as if repeated in this subclause. If however the question is decided against the State the date of the award shall be the notice date for the purposes of this Agreement.

(7) If prior to the first day of May 1962 the Company has been unable to enter into contracts as aforesaid the Company may by the 31st day of May 1962 produce to the Minister evidence sufficient to show that if given an extension of time it has reasonable prospects of being able to negotiate such contracts and the Minister will extend the period for giving the notice referred to in subclause (1) of this clause for such period from the first day of May 1962 as the evidence produced by the Company shall justify. The Minister shall advise the Company in writing of his decision within one (1) month of receipt of the evidence from the Company and the Company if dissatisfied with the Minister's decision may within one (1) month refer the question whether the Minister should extend the period for giving notice or should extend it for a longer period to arbitration. If the question is decided against the State the arbitrator arbitrators or umpire shall extend the period for such period as the evidence produced by the Company shall justify.

5. (1) The State shall forthwith after the execution hereof grant to the Company a right of occupancy for a period of one (1) year determinable on the 31st day of January 1962 if the Bill referred to in subclause (1) of clause 1 is not passed by the said Parliament and does not come into

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operation as an Act by that date of the Crown land the subject of Temporary Reserve No. 1972H delineated subject to survey and bordered blue on the plan in Appendix "A" for the purpose of prospecting for iron ore and iron pyrites subject to the terms and conditions in Appendix "B" hereto contained and otherwise subject to the provisions of the Mining Act 1904. If the said Bill is passed and comes into operation as an Act by the 31st day of January 1962 then notwithstanding anything contained in sections 276 and 277 of the Mining Act 1904 the term of the Temporary Reserve shall be two (2) years from the date hereof.

(2) The Company shall pay in advance each year to the Department of Mines on behalf of the State the sum of TWO HUNDRED POUNDS (£200) for the right of occupancy referred to in subclause (1) of this clause the first payment to be made within fourteen (14) days of the granting of the right of occupancy and the second payment one year thereafter.

(3) On and after the date the Bill to ratify this Agreement comes into operation as an Act or the notice date whichever shall be the later the Company may apply under the provisions of the Mining Act 1904 for such mineral leases for iron ore and the ores and earths of that metal including iron pyrites situated within the Temporary Reserve as it sees fit and the State shall ensure that the Minister approves such applications upon and subject to the provisions of the said Act and of this Agreement.

(4) The Minister on application by the Company from time to time will grant such machinery tailings or other leases or tenements under the Mining Act 1904 as the Company shall reasonably require and request for the purpose of carrying on its operations contemplated by this Agreement on the mineral leases.

(5) Until the determination of this Agreement and thereafter if this Agreement is determined by the Company pursuant to paragraph (b) of subclause (1) of clause 19 hereof the Company subject to the due compliance by it with its other obligations with respect to the carrying on of mining operations on the mineral leases in accordance with the provisions hereof shall not be required to comply with labour conditions imposed by or under the Mining Act 1904 in regard to mineral leases.

(6) The Company in its operations on the mineral leases shall be subject to the provisions of the Mines Regulation Act 1946 and the Company shall comply with and observe such provisions.

(7) Royalty will be payable by the Company to the Department of Mines on behalf of the State at the rate of six shillings (6.-d.) per dry weight ton in respect of the first two million dry weight tons of iron ore recovered and sold and after the recovery and sale of two million dry weight tons of iron ore at the rate of:—

- (a) six shillings (6.-d.) per dry weight ton on all iron ore recovered by open cut mining methods and sold (other than concentrates derived by upgrading iron ore);
- (b) one shilling and sixpence (1.6d.) per dry weight ton on all iron ore recovered by other than open cut methods of mining and sold other than concentrates derived by upgrading iron ore;
- (c) one shilling and sixpence (1.6d.) per dry weight ton on all concentrates derived by upgrading iron ore (however originally mined) and sold; and
- (d) at such rate as is from time to time prescribed by regulation under the Mining Act 1904 on all iron pyrites recovered and sold.

(8) In the months of January April July and October of each year the Company shall furnish to the Minister a return of all iron ore and concentrates which have become chargeable with royalty under the subclause (7) of this clause during the period of three months ending on the last day of the preceding December March June or September as the case may be and shall within one month of the expiration of each such calendar quarterly period pay to the Under Secretary for Mines on behalf of the State the amount of royalty due for such quarter.

(9) For the purpose of computing the tonnages in respect of which royalties are payable the weight thereof as recorded by the Railways Commission for the purposes of calculating freight charges with such corrections or adjustments thereof as shall be necessary to ensure reasonable exactitude shall after deduction of the moisture content as ascertained by the Company on sampling and testing in accordance with standard practice be taken as correct. The railway weighbridge if used for the purposes of calculating freight charges shall be tested and adjusted at the expense of the State whenever either party requests this to be done. The State may carry out such check sampling and testing as it desires and the Company will provide facilities for that purpose.

Railways.

6. (1) The Company covenants and agrees with the State that in consideration of the grant by the State to the Company of the lease referred to in subclause (3) of this clause it will—

- (a) within a period of three months from the notice date in accordance with such reasonable specifications as may be laid down by the Railways Commission commence to construct and thereafter with due diligence complete and to the extent required by the Railways Commission fence on land to be leased to the Company by the State a single line railway with its appurtenances from a point to be determined by the Company within the Temporary Reserve along the route approved as provided in paragraph (b) of clause 3 hereof to the railhead at Mullewa or to such other point within two miles of the said railhead on the existing railway as the Railways Commission determines;
- (b) provide two diesel locomotives of a design approved by the Railways Commission and bogey rolling stock of a design so approved having an iron ore capacity of one thousand two hundred and forty (1,240) tons.

(2) For the consideration aforesaid the Company will maintain the railway line and fencing referred to in paragraph (a) of this subclause during the term of the lease referred to in subclause (3) of this clause.

(3) At any time after the notice date the Company may give notice in writing to the State that it desires to commence construction of the railway line referred to in subclause (1) of this clause. Upon receipt of such notice the State shall if the making of the said railway has then already been authorised by the said Parliament and otherwise so soon as authorisation therefor has been given forthwith—

- (a) at the joint expense of the State and the Company acquire such land and exercise such other statutory powers as may be necessary to enable the construction of the said railway; and
- (b) grant a lease of the land so acquired and all other land that may be necessary to enable the construction of the said railway for a term of five (5) years. Such lease shall contain a covenant by the Company to construct the

railway referred to in paragraph (a) of subclause (1) of this clause and such other covenants and provisos as the Solicitor General for the said State reasonably considers necessary for the protection of the State as lessor.

(4) The State shall as soon as conveniently may be introduce a Bill in the said Parliament seeking the approval of the said Parliament to the making of the said railway. Such Bill shall provide that the said railway shall for all purposes be deemed a railway to which Part VI of the Public Works Act 1902 applies.

(5) Any expenses incurred or payable by any Minister of the State under sections 100, 101, 102, 103, 104, 108, 110, 112 and 113 of the Public Works Act, 1902 in relation to the railway by reason of its being deemed a railway as provided in subclause (4) of this clause shall be borne by the State and the Company equally.

(6) The said railway and its appurtenances shall not be subject to tenant's rights in the Company and at the expiration or sooner determination of the said lease the Company's interest in the said railway and appurtenances shall absolutely cease and the said diesel locomotives and the said rolling stock and any appurtenances of the said railway whether or not fixtures shall become the absolute property (freed from all encumbrances) of the State which shall not be obliged to pay any compensation to the Company in respect of the said railway appurtenances locomotives or rolling stock or in respect of improvements effected on the land the subject of the lease.

(7) The State shall at its own expense—

(a) from the expiration of one (1) month's notice from the Company that it desires to transport ore over the said railway and the railway referred to in subclause (9) of this clause and during the period of the lease referred to in paragraph (b) of subclause (3) of this clause provide sufficient crews to operate and shall operate sufficient trains to transport ten thousand (10,000) tons of ore each week from the mineral leases to Geraldton with the rolling stock provided by the Company under paragraph (b) of subclause (1) of this clause;

(b) as from the expiration of the notice referred to in paragraph (a) of this subclause and during the period of the said lease service and maintain the locomotives and rolling stock mentioned in paragraph (b) of subclause (1) of this clause; and

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(c) for a period of ten (10) years from and after the date of expiration or sooner determination of the said lease or for the period from that date until the Company ceases to transport approximately 500,000 tons in the aggregate of iron ore pyrites and concentrates or some one or more of them from the mineral leases each year by such railway whichever shall be the shorter period provide the trains referred to in paragraph (a) of this subclause and the crews to operate the same and maintain and operate the railway referred to in paragraph (a) of subclause (1) hereof.

(8) The loading and unloading of ore wagons other than shunting on the mineral leases and at Geraldton shall be the responsibility at all times of the Company which shall load and trim all wagons in a manner acceptable to and to the satisfaction of the Railways Commission for proper distribution of load and safe travel. Loading shall not exceed the tonnage capacity shown on the wagon and all wagons shall be loaded to capacity.

(9) After the notice date the State will commence to recondition the existing railway from Mullewa to Geraldton so as to enable it to carry the trains mentioned in paragraph (a) of subclause (7) of this clause and will complete such reconditioning with due diligence and will thereafter maintain such railway in that order and condition for the period of the said lease and for the shorter period mentioned in paragraph (c) of subclause (7) of this clause.

(10) The Company shall use only the rail facilities referred to in this clause and no other facilities for the transport of iron ore pyrites and concentrates from the mineral leases to Geraldton and shall pay to the State freight charges as follows—

(a) as to all iron ore pyrites and concentrates transported as aforesaid prior to—

(i) the date on which the Company completes the transport as aforesaid of two million (2,000,000) tons in the aggregate of iron ore pyrites and concentrates; or

(ii) the tenth day of August, 1965, whichever is the earlier date a charge of eleven shillings and nine pence (11.9d.) per ton;

- (b) as to all iron ore pyrites and concentrates transported after the earlier of the two dates referred to in paragraph (a) of this subclause the sum of eleven shillings and nine pence (11s.9d.) per ton adjusted from time to time as provided in subclause (11) of this clause.

(11) The freight charge of eleven shillings and nine pence (11s.9d.) referred to in subclause (10) of this clause is based on costs prevailing at the date hereof and shall be adjusted on the earlier of the two dates referred to in paragraph (a) of subclause (10) hereof and thereafter from time to time to recognise the actual amount of any increase or decrease in the direct cost to the Railways Commission of maintaining and operating the rail facilities to be provided by the State under this clause. The State will at the request of the Company procure the Certificate of the Auditor General of the State as to the correctness of any adjustment in the freight charge. For the purposes of this subclause the term "Auditor-General" means the Auditor General for the time being of the State and includes the person for the time being acting as Auditor General or discharging the duties of his office.

(12) (a) Where the Company requires backloading from Geraldton to the mineral leases of goods reasonably required by it for carrying on its operations on the mineral leases and if the Company provides and maintains in good order rolling stock approved by the Railways Commission for the purpose then the Company during the period of the lease and the shorter period referred to in paragraph (c) of subclause (7) of this clause will not be charged as freight for such backloading freight charges higher than that set out in subclause (10) in respect of the transport of ore. The gross tonnage of any of the above goods transported in any train will be as determined by the Railways Commission.

Back-
loading.

(b) With respect to any such backloading the Company will be responsible for—

(i) the loading of same at Geraldton;

(ii) the discharging of same at the mineral leases and shall so discharge at the mineral leases the goods transported in such manner as to avoid undue delay to the ore trains or other traffic on the said railway.

(13) In ascertaining the number of tons transported for the purpose of calculating the amount of freight charges payable by the Company to the Railways Commission under this clause railway weighbridge weights or such alternative method of measuring as is mutually agreed shall be used.

(14) The Railways Commission shall each month forward to the Company a statement showing the freight charges payable in respect of all materials and goods transported or backloaded during the previous month and the Company shall pay the charges due within fourteen (14) days of the receipt of the statement.

Stockpile
area.

7. The State will lease to the Company as a stockpiling area the area delineated and coloured green on the map in Appendix "C" hereto for the same term as the lease referred to in paragraph (b) of subclause (3) of clause 6 hereof. Such lease shall contain a covenant by the Company to construct the conveyor system referred to in subclause (1) of clause 8 hereof and such other covenants and provisos as the Solicitor General for the State reasonably considers necessary for the protection of the State as lessor.

Loading
facilities.

8. (1) In consideration of the grant by the State of the lease referred to in clause 7 hereof the Company will construct and during the period of the lease referred to in clause 7 hereof maintain a fixed conveyor system approved by the State capable of transferring five hundred (500) tons of iron ore per hour from the stockpile area to ships holds. Such approval shall not be unreasonably withheld.

(2) The said conveyor system shall not be subject to tenant's rights in the Company and at the expiration or sooner determination of the lease of the stockpile area the Company's interest in the said conveyor system shall absolutely cease and determine and the State shall not be obliged to pay any compensation in respect of the said conveyor system which shall become the absolute property of the State and which the Company shall ensure is free of all encumbrances.

(3) If after the expiration or sooner determination of the lease of the stockpile area the Company shall require to ship iron ore pyrites or concentrates derived from the mineral leases from the Port of Geraldton the State will make available to the Company facilities to be maintained by the State capable of loading up to five hundred (500) tons per hour for a period of ten (10) years from the said expiration or determination or for the period therefrom during which the Company continues to so ship approximately five hundred thousand (500,000) tons in the aggregate of iron ore pyrites and concentrates or some one or more of them every year whichever is the shorter period.

(4) During the shorter period referred to in subclause (3) of this clause the Company will pay to the State on the fifteenth day of each month for the use of the facilities referred to in that subclause the sum of threepence (3d.)

for every ton of iron ore pyrites or concentrates derived from the mineral leases loaded by means of the facilities and shipped during the preceding month.

(5) The Company will at all times provide and pay for the labour and power necessary to operate the said facilities.

9. The State will ensure that No. 2 Wharf in the Port of Geraldton or after the expiration of the lease referred to in clause 7 hereof the same or another wharf of equal capacity is made available for the berthing of such ships as shall be necessary to carry all iron ore pyrites or concentrates derived from the mineral leases which the Company desires to load at the said Port and will maintain such berth and will carry out any dredging operations necessary to enable ore carriers of not less than ten thousand (10,000) tons burthen to use the said berth so long as the Company is shipping through the said port approximately five hundred thousand (500,000) tons in the aggregate of iron ore pyrites and concentrates or some one or more of them every year. Wharf facilities.

10. The Company will pay to the State on the 15th day of each month a wharf charge of three shillings and sixpence (3s. 6d.) or such other charge as the parties may from time to time agree for every ton of iron ore pyrites or concentrates shipped from the Port of Geraldton during the preceding month so long as the Company continues to ship every year approximately five hundred thousand (500,000) tons in the aggregate of iron ore pyrites and concentrates or some one or more of them derived from the mineral leases. Wharf charges

11. Notwithstanding anything contained in paragraph (c) of subclause (7) of clause 6 subclause (3) of clause 8 clause 9 clause 10 and subclause (2) of clause 12 hereof the obligations of the State and the rights of the Company expressed to continue if or so long as the Company continues to transport or ship in every year approximately five hundred thousand (500,000) tons of iron ore pyrites and concentrates shall determine if the Company fails to transport or ship in any period of three consecutive months approximately one hundred and twenty-five thousand (125,000) tons in the aggregate of iron ore pyrites and concentrates unless the parties otherwise agree or unless the Company during or within fourteen (14) days of the expiration of the period of three consecutive months produces evidence to the State to prove it has reasonable prospects of transporting or shipping by the expiration of one year from the commencement of the period of three consecutive months five hundred thousand (500,000) tons in the aggregate of iron ore pyrites or concentrates.

Water.

12. (1) The Company agrees with the State that the Company will at its own risk and expense and subject to and in accordance with the requirements from time to time of the appropriate authorities of the Government and Local Authorities in the said State dig all wells and bores and provide and construct all works pipes plant equipment and things as may be necessary to fulfil the Company's water requirements on the mineral leases for the purposes contemplated by this Agreement.

(2) The State will so long as the Company continues to ship through the Port of Geraldton every year approximately five hundred thousand (500,000) tons in the aggregate of iron ore pyrites and concentrates or some one or more of them co-operate with the Company to facilitate the supply of water from natural sources for the purposes of the Company's operations contemplated by this Agreement and will at the expense of the State in all things exercise the powers to be granted by the ratifying Act referred to in paragraph (b) of subclause (2) of clause 1 of this Agreement of compulsory acquisition to acquire such rights interests and easements including easements relating to the running and maintenance of pipes and the pumping of water along routes to be mutually agreed and in default of agreement to be determined by arbitration as the Company may reasonably require.

Assignment.

13. (1) Without affecting the liability of the Company under this Agreement the Company with the consent in writing of the State shall have the right to assign or dispose of all or part of its rights and obligations under this Agreement or any interest therein or acquired thereunder and such consent shall not be arbitrarily or unreasonably withheld subject to the assignee or assignees executing in favour of the State a deed of covenant to comply with and observe the assigned obligations.

(2) When under the provisions of subclause (1) of this clause any interest of the Company is disposed of or assigned to a company being at the date of disposal or assignment an associated or subsidiary company of the assignor the State will not levy or exact any State Stamp Duties in respect of that disposal or assignment if effected for the purpose of construction reconstruction or reorganisation.

No
acquisition
of works.

14. Having regard to the particular nature of the industry proposed to be established by the Company under this Agreement and subject to the performance by the Company of its obligations hereunder the State will not resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any portion of the Company's works on the mineral leases the

resumption of which would impede its mining activities without the consent in writing of the Company first had and obtained which consent shall not be arbitrarily or unreasonably withheld.

15. Subject to the due performance by the Company of its obligations under this Agreement the State shall ensure that during the currency of this Agreement the rights of the Company hereunder shall not in any way through any act of the State by way of discrimination in purport of effect against the Company be impaired disturbed or prejudicially affected PROVIDED THAT nothing in this clause shall apply to any law or requirement relating to safety.

Preservation
of rights.

16. The State shall not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority 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 operations of the Company or any subsidiary or associated company in the conduct of business incidental to the Company's business hereunder nor will the State take or permit to be taken any other discriminatory action which would deprive the Company or any subsidiary or associated company of full enjoyment of the rights granted and intended to be granted under this Agreement.

Taxes and
charges.

17. The State agrees that if so requested by the Company and so far as its powers and administrative arrangements permit it will endeavour to assist the Company to obtain adequate and suitable labour for its operations under this Agreement including assistance towards obtaining suitable immigrants.

Labour.

18. The State shall ensure that fees taxes or other charges or levies imposed by the State on the cartage of goods by road or by rail shall not discriminate against the Company.

Non-dis-
crimination
against
Company.

19. (1) Subject to clause 22 hereof relating to delays if at any time during the continuance of this Agreement—

(a) the Company fails—

(i) to comply with observe or carry out the provisions of this Agreement on its part to be complied with observed or carried out; or

(ii) abandons or repudiates this Agreement

Termination
of this
Agreement.

the State may by notice in writing to the Company terminate this Agreement specifying in the notice where the State purports to terminate pursuant to sub-paragraph (i) of this paragraph the failure;

(b) the State fails—

(i) to comply with observe or carry out the provisions of this Agreement on its part to be complied with observed or carried out; or

(ii) abandons or repudiates this Agreement

the Company may by notice in writing to the State terminate this Agreement specifying in the notice where the Company purports to terminate pursuant to sub-paragraph (i) of this paragraph the failure.

(2) The notice of termination shall be deemed to have been received on the day following its postage and shall take effect—

(a) where the notice specifies a failure by the Company to comply with observe or carry out any of the provisions of clause 3 subclauses (6) (7) and (8) of clause 5 subclauses (1) (2) (9) and (14) of clause 6 subclauses (4) and (5) of clause 8 clause 10 or paragraph (a) of clause 24 at the expiration of one month from that day;

(b) where the notice is given in consequence of abandonment or repudiation by either party on that day; or

(c) in any other case at the expiration of six (6) months from that day.

(3) Unless this Agreement is terminated by the Company pursuant to subclause (1) of this clause or determines pursuant to subclause (6) hereof (in which event the rights of the Company in and over and with respect to the mineral leases and any other mining tenement or interest granted pursuant to the provisions of this Agreement under the Mining Act 1904 and the right to apply for a renewal thereof shall in no way be affected) the rights interests and obligations of the parties shall cease and determine and all rights and interests of the Company in any temporary reserve the mineral leases or lease granted pursuant to the provisions of this Agreement shall cease and determine on the notice of termination taking effect.

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(4) The termination of this Agreement by either party shall in no way affect:—

- (a) the right of either party to sue for or receive any monies payment whereof shall have accrued due and become payable under the provisions of this Agreement prior to termination thereof or to sue in respect of any breach or non-observance of any provision hereof committed or occurring prior to termination of this Agreement; or
- (b) the right of either party to indemnity pursuant to clause 26 hereof in respect of acts matters or things occurring prior to termination of this Agreement.

(5) Subclauses (1) and (2) of this clause shall not apply to termination of this Agreement pursuant to sub-clauses (4) or (6) of clause 4 hereof.

(6) Unless earlier determined pursuant to any other provision of this Agreement this Agreement shall cease and determine without prejudice to the rights of either party to sue in respect of any breach or non-observance of any provision hereof committed or occurring prior to the date of determination if the Company ceases after the expiration or prior determination of the lease referred to in clause 7 hereof to produce from the mineral leases approximately five hundred thousand (500,000) tons in the aggregate of iron ore pyrites and concentrates in any period of twelve (12) consecutive months.

20. 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.

Delegation
to third
parties.

21. 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.

Variation.

22. (1) This Agreement shall be deemed to be 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

delays caused by or arising from act of God act of war *force majeure* act of public enemies floods and washaways strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials failure on reasonable grounds to secure contractors delays of contractors riots and civil commotion and delays due to factors which could not reasonably have been foreseen and delays due to overall economic conditions in Australia or any other country nominated by notice to the Minister before the notice date from which the finance or a substantial proportion of the finance required to enable the Company to discharge its obligations under this Agreement is to be provided or to which a substantial portion of the Company's or subsidiary or associated companies' products derived from the mineral leases is intended by the Company its subsidiary or associated company as the case may be to be sold inability to sell or otherwise dispose of such products or to prices for such products falling below profitable levels.

(2) This clause shall apply only to delays of which and of the cause of which notice in writing is given by the party subject to the delay to the other party hereto within one (1) month of the commencement of the delay.

Export
Licences.

23. The State shall take all steps reasonably requested by the Company to assist the Company in obtaining from the Commonwealth of Australia any licences or permits required to enable the Company to export all iron products recovered from the mineral leases.

Indemnity.

24. (a) The Company shall during the continuance of this Agreement indemnify and keep indemnified the State against all demands claims actions or suits except those arising by or out of the negligent acts or omissions of the State its servants agents or contractors (other than the Company) or any nuisance committed by the State its servants agents or contractors (other than the Company) arising by or out of—

- (i) the occupancy use or operation by the Company of the railway referred to in clause 6 hereof;
- (ii) the construction of the said railway;
- (iii) the occupancy use or operation by the Company of the stockpiling area referred to in clause 7.

(b) The State during the continuance of this Agreement shall indemnify the Company against all demands claims actions or suits arising by or out of the negligent acts or omissions of the State or of its servants agents or

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*Iron Ore (Tallering Peak)
Agreement.*

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contractors or by or out of any nuisance committed by it or them if in the case of servants agents or contractors their acts omissions or the nuisances committed by them arise out of or in connection with the performance of their respective contracts of or for services with the State.

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

26. 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 upon between the parties in terms of this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the Arbitration Act, 1895. Arbitration.

27. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Civil Service of the said State acting by direction of 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 or a general manager secretary or attorney of the Company and forwarded by prepaid post to "The Minister for Mines the Department of Mines 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. Notices.

IN WITNESS WHEREOF THE HONOURABLE DAVID BRAND M.L.A. has hereunto set his hand and seal and the COMMON SEAL of the Company has hereunto been affixed the day and year first hereinbefore mentioned.

SIGNED SEALED AND DELIVERED by }
the said THE HONOURABLE DAVID } DAVID BRAND LS
BRAND M.L.A. in the presence of— }
Arthur Griffith

THE COMMON SEAL of WESTERN }
MINING CORPORATION LIMITED was } C.S.
hereunto affixed in the presence of— }

G. Lindesay Clark
L. Brodie Hall

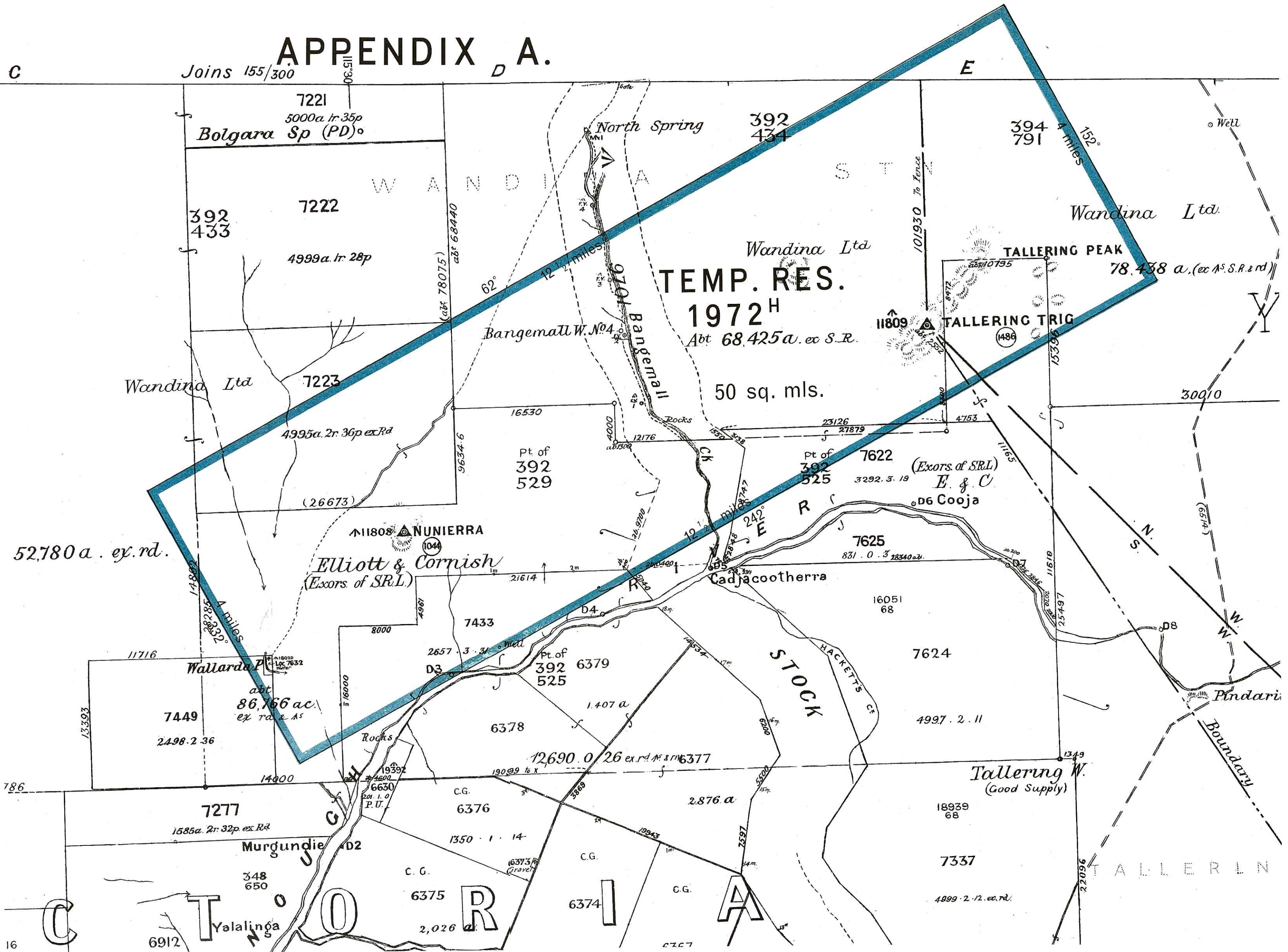
Director
Authorised Witness.

APPENDIX A.

C

D

E



52,780 a. ex. rd.

TEMP. RES.
1972^H
Abt 68,425 a. ex S.R.
50 sq. mls.

TALLERING PEAK
78,438 a. (ex A.S.S.R. & rd)

TALLERING TRIG
(1486)

Elliott & Cornish
(Exors. of SRL)

(Exors. of SRL)
E. & C
D6 Cooja

Tallerling W.
(Good Supply)

STOCK
HACKETT'S CR

Boundary

APPENDIX "B"

- (1) That the occupant shall within 60 days of approval of the right of occupancy appearing in the *Government Gazette*, mark at a corner of the boundary of the Temporary Reserve a landmark consisting of a post or cairn to serve as a commencing or datum point and shall advise the Minister for Mines in writing the position of such point.
- (2) That the occupant shall not use the land comprised in this Reserve for any other purpose than that of prospecting for Iron Ore.
- (3) That the rights of occupancy will not give any rights to the occupant to prospect for any mineral other than Iron Ore and in the event of the discovery by the occupant of payable mineral other than Iron Ore the Minister for Mines, may by notice, require the occupant to apply for mining tenements for such mineral.
- (4) That the existing rights of any prospecting area, claim, lease or authorised holding, shall be preserved to the holder thereof and shall not be encroached on or interfered with by the occupant of this Reserve.
- (5) That the rights granted under this authority shall be no bar to any person desiring to acquire mining tenements for any mineral other than Iron Ore in the said Reserve or to any person desiring to acquire a holding under the Land Act, 1933, provided the land applied for does not include any of the occupants' workings which may in the discretion of the Minister for Mines be secured to the occupant of this Reserve.
- (6) Any land alienated or in the course of alienation, and any land reserved (not being Crown Land within the meaning of the Mining Act, 1904), and any land registered or to be acquired and held under the Mining Act, 1904 is excluded from this Reserve.
- (7) No transfer of this authority to occupy will be permitted without the approval of the Minister for Mines first obtained.
- (8) That the occupant of this Reserve shall and except to the extent that the Agreement otherwise provides shall furnish the Minister for Mines with a QUARTERLY SUMMARY REPORT applicable to operations being carried on within the said Reserve.

- (9) That at the end of each calendar year or upon surrender, expiry, cancellation or abandonment, the occupant shall furnish the Minister for Mines with a complete report of all operations carried out on this ground, including the following information:—(1) Methods of exploration; (2) details and results of all geological and geophysical work; (3) details of excavations and drill holes; (4) nature of material tested with all assay results. Plans and sections are to be supplied wherever practicable.

- (10) That the rights granted under this authority shall be subject to the provisions of the Forests Act, 1918 and the Regulations made thereunder.

G. LINDESAY CLARK.

L. BRODIE HALL.

ARTHUR GRIFFITH.

10/8/61.

APPENDIX C.

E V A N S
S T.

B U R G E S
S T.

C R O W T H E R
S T.

M A R I N E
T E R R A C E
H O U S E S
A N D
B U I L D I N G S

A R E A : 2a. 3r. 32p.

W H A R F
B U I L D I N G S

C O N C R E T E
W H A R F

H A R B O U R

STOCKPILE AREA
GERALDTON HARBOUR
SCALE : 1 INCH TO 100 FT.