

DARDANUP PINE LOG SAWMILL AGREEMENT ACT 1992

No. 46 of 1992

AN ACT to ratify an Agreement between the State, Wespine Industries Pty. Ltd., Westralian Forest Industries Limited and Bunnings Limited for the purpose of expanding the operations of the existing pine log sawmill at Dardanup, and for related purposes.

[Assented to 10 December 1992.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Dardanup Pine Log Sawmill Agreement Act 1992*.

Commencement

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

Interpretation

3. In this Act, unless the contrary intention appears —

“the Agreement” means the Agreement a copy of which is set out in the Schedule.

Agreement ratified and implementation authorized

4. (1) The Agreement is ratified.

(2) The implementation of the Agreement is authorized.

(3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Agreement shall operate and take effect notwithstanding any other Act or law.

SCHEDULE

[Section 3]

THE AGREEMENT

DARDANUP PINE LOG SAWMILL AGREEMENT

THIS AGREEMENT is made this 26th day of May 1992

BETWEEN

THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the first part

WESPINE INDUSTRIES PTY. LTD. ACN 052 954 337 a company incorporated in the State of Western Australia and having its registered office at 10th Floor, 225 St George's Terrace, Perth (hereinafter called "the Company" in which term shall be included its successors and permitted assigns) of the second part **WESTRALIAN FOREST INDUSTRIES LIMITED** ACN 008 672 740 a company incorporated in the State of Western Australia and having its registered office at 1-27 Somersby Road, Kewdale (hereinafter called "WESFI") of the third part

AND BUNNINGS LIMITED ACN 008 673 363 a company incorporated in the State of Western Australia and having its registered office at 4th Floor, 255 Adelaide Terrace, Perth (hereinafter called "Bunnings") of the fourth part.

W H E R E A S:

- (a) the Company is desirous of expanding the operations of the existing pine log sawmill at Dardanup for the production of finished timber for sale into domestic and international markets by progressively over ten

years increasing the throughput of the sawmill from the current log input capacity of 70,000 cubic metres to 400,000 cubic metres per annum;

- (b) timber to the pine log sawmill is to be sourced in part from State softwood forest pursuant to an agreement to be entered into between the Company and the Executive Director of the Department of Conservation and Land Management;
- (c) the State for the purpose of promoting employment opportunity and industrial development in Western Australia desires to assist the proposed expansion upon and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context -
"advise", "apply", "approve", "approval", "consent",
"certify", "direct", "notify", "request", or "require",
means advise, apply, approve, approval, consent,
certify, direct, notify, request, or require in writing as
the case may be and any inflexion or derivation of
any of those words has a corresponding meaning;

"**approved proposal**" means a proposal approved or
determined under this Agreement;

"**Bunnings softwood plantations**" means -

- (a) land as at the date of this Agreement which is
owned by Bunnings or its related bodies corporate in
the said State on which trees of *Pinus species radiata*
or *pinaster* are grown;
- (b) land on which trees of *Pinus species radiata* or
pinaster are grown and in respect of which Bunnings
or its related bodies corporate has, at the date of this
Agreement, a contractual right to acquire sawlogs;
and

(c) lands on which trees of *Pinus species radiata* or *pinaster* are grown and which after the date of this Agreement are owned by Bunnings or its related bodies corporate or in respect of which Bunnings or its related bodies corporate has, after the date of this Agreement, a contractual right to acquire sawlogs;

"CALM Act" means the Conservation and Land Management Act 1984;

"Clause" means a clause of this Agreement;

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

"EP Act" means the Environmental Protection Act 1986;

"Executive Director" means the Executive Director of the Department of Conservation and Land Management referred to in section 38(1) of the CALM Act;

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

"log timber" means sawlog quality timber comprising *Pinus species radiata* and *pinaster* grown in State softwood forest and felled for the purpose of the agreement referred to in subclause (1) of Clause 10;

"management plans" means management plans published under section 60 of the CALM Act;

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

"Minister for Planning" means the Minister in the Government of the State for the time being responsible for the administration of the Town Planning and Development Act 1928;

"month" means calendar month;

"notice" means notice in writing;

"person" or "persons" includes bodies corporate;

"pine log sawmill" means the sawmill and ancillary buildings on the sawmill site;

"public road" means a road as defined by the Road Traffic Act 1974;

"related bodies corporate" means bodies corporate related within the meaning of that term in section 50 of the Corporations Act 1989 of the Commonwealth to Bunnings or WESFI as the case may require;

"said State" means the State of Western Australia;

"sawmill site" means the land at Dardanup shown coloured red on the plan marked "A" initialled by or on behalf of the parties hereto for the purpose of identification;

"scheduled works" means the expansion in stages, pursuant to market demand, of the pine log sawmill as outlined in the Schedule to this Agreement;

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

"State softwood forest" means any land in the Swan, Central and Southern Forest Regions as those areas are at the date of this Agreement defined under the relevant management plans on which trees of *Pinus* species *radiata* or *pinaster* are grown and

which is held or occupied by the Executive Director under the CALM Act or in respect of which an agreement for harvesting and selling softwood on that land has been made between the Executive Director and another person under or pursuant to the CALM Act, but not including any land the subject of Bunnings softwood plantations or WESFI softwood plantations;

"subclause" means subclause of the Clause in which the term is used;

"this Agreement" **"hereof"** and **"hereunder"** refer to this Agreement (including the Schedule) whether in its original form or as from time to time added to varied or amended;

"WESFI softwood plantations" means -

(a) land as at the date of this Agreement which is owned by WESFI or its related bodies corporate in the said State on which trees of *Pinus species radiata* or *pinaster* are grown;

(b) land on which trees of *Pinus species radiata* or *pinaster* are grown and in respect of which WESFI or its related bodies corporate has, at the date of this Agreement, a contractual right to acquire sawlogs.

(c) lands on which trees of *Pinus species radiata* or *pinaster* are grown and which after the date of this Agreement are owned by WESFI or its related bodies corporate or in respect of which WESFI or its related bodies corporate has, after the date of this Agreement, a contractual right to acquire sawlogs.

Interpretation

2. In this Agreement -

(a) monetary references are references to Australian currency unless otherwise specifically expressed;

- (b) power given under any clause other than Clause 22 to extend any period or date shall be without prejudice to the power of the Minister under Clause 22;
- (c) clause headings do not affect the interpretation or construction;
- (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context; and
- (e) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

Ratification of Agreement

3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 1 July 1992 or such later date as the parties hereto may agree.

Commencement and operation of Agreement

4. (1) The provisions of this Agreement other than this Clause and Clauses 1, 2 and 3 shall not commence to operate until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (2) If before 1 July 1992 or such later date as may be agreed pursuant to Clause 3 the said Bill has not come into operation as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against

any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

- (3) On the said Bill coming into operation as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Company to submit proposals

5. (1) The Company shall on or before 30 September 1992 and subject to EP Act and to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals for the scheduled works which proposals shall include plans where appropriate and specifications where reasonably required by the Minister and shall include the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely -
- (a) the expansion in stages of the pine log sawmill to a log input capacity of 400,000 cubic metres per year in accordance with the scheduled works;
 - (b) personnel requirements and recruitment policies;
 - (c) transport;
 - (d) power supply;
 - (e) water supply;
 - (f) use of local labour professional services manufacturers suppliers contractors and materials and measures to be taken with respect to the engagement and training of

employees by the Company, its agents and contractors in connection with the scheduled works; and

- (g) an environmental management programme as to measures to be taken, in respect of the Company's obligations under the EP Act, for the protection and management of the environment in relation to its activities under this Agreement.

Order of proposals

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

Use of existing infrastructure

- (3) The proposals pursuant to subclause (1) may with the approval of the Minister and that of any other parties concerned instead of providing for the construction of new facilities or equipment or the provision of new services of the kind therein mentioned provide for the use by the Company of any existing facilities equipment or services of such kind belonging to the Company or, upon reasonable terms and conditions, of any other existing facilities equipment or services of such kind.

Additional submissions

- (4) At the time when the Company submits the said proposals it shall submit to the Minister details of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it proposes to consider obtaining from or having carried out or

permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.

Marketing and financial arrangements

- (5) At the time when the Company submits the said proposals it shall furnish to the Minister's reasonable satisfaction -
 - (a) details of marketing arrangements demonstrating the Company's ability to profitably sell or use pine log products and by-products manufactured at the pine log sawmill;
 - (b) details of the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
 - (c) confirmation of the readiness of the Company to embark upon and proceed to carry out the operations referred to in those proposals.

Consideration of proposals

- 6. (1) Subject to the EP Act, in respect of each proposal submitted pursuant to subclause (1) of Clause 5 the Minister shall -
 - (a) approve of the proposal without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters

mentioned in subclause (1) of Clause 5 not covered by the said proposal as shall be specified by the Minister; or

- (c) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this Clause shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

Advice of Minister's decision

- (2) The Minister shall within 2 months after receipt of proposals pursuant to subclause (1) of Clause 5 or where the proposals are to be assessed under section 40(1)(b) of the EP Act then within two months after service on him of an authority under section 45(7) of the EP Act give notice to the Company of his decision in respect to the proposals.

Consultation with Minister

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

Minister's decision subject to arbitration

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

Arbitration award

- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows -
 - (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or
 - (b) if by the award the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

Effect of non-approval of proposals

- (6) Notwithstanding that under subclause (1) any proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by 30 September

1993 or by such extended date or period if any as the Company shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Company 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 24.

Implementation of proposals

- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the approved proposals in accordance with the terms thereof.

Additional proposals

7. (1) If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities at the pine log sawmill carried on pursuant to this Agreement beyond those activities specified in any approved proposals it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (g) of subclause (1) of Clause 5 as the Minister may require.
- (2) The provisions of Clause 5 and Clause 6 (other than subclauses (5) and (6) of Clause 6) shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause with the proviso that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the

Minister that it shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement approved proposals pursuant to this Clause in accordance with the terms thereof.

Protection and management of the environment

8. (1) The Company shall in respect of the matters referred to in paragraph (g) of subclause (1) of Clause 5 and which are the subject of approved proposals, carry out a continuous programme including monitoring to ascertain the effectiveness of the measures it is taking pursuant to such approved proposals for the protection and management of the environment and shall as and when reasonably required by the Minister from time to time submit to the Minister a detailed report thereon.
- (2) Whenever as a result of its activities pursuant to subclause (1) or otherwise information becomes available to the Company which in order to more effectively protect or manage the environment may necessitate or could require any changes or additions to any approved proposals or require matters not addressed in any such proposals to be addressed the Company shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.
- (3) The Minister may within 2 months of the receipt of a detailed report pursuant to subclause (1) or (2) notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and such other reasonable matters as the Minister may require in connection therewith.

- (4) The Company shall within 2 months of receipt of a notice given pursuant to subclause (3) submit to the Minister additional detailed proposals as required and the provisions of subclauses (1), (2), (3) and (4) of Clause 6 shall *mutatis mutandis* apply.
- (5) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the decision of the Minister or an award on arbitration as the case may be in accordance with the terms thereof.

Use of local labour professional services and materials

9. (1) The Company shall, for the purposes of this Agreement -
- (a) except in those cases where the Company can demonstrate it is impracticable so to do, use labour available within Western Australia (using all reasonable endeavours to ensure that as many as possible of the Company's workforce be recruited from the South West region of the said State) or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;
 - (b) as far as it is reasonable and economically practicable so to do, use the services of engineers surveyors architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;

- (c) during design and when preparing specifications, calling for tenders and letting contracts for works materials plant equipment and supplies in connection with the scheduled works (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
 - (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies in connection with the scheduled works where price quality delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and where possible preference to other Australian suppliers manufacturers and contractors; and
 - (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed in connection with the scheduled works with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and where possible preference to tenders arrangements or proposals that include Australian participation.
- (2) Except as otherwise agreed by the Minister the Company shall in every contract entered into with a third party for the supply of services labour works materials plant equipment or supplies for the purposes of this Agreement

require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party's implementation of that condition.

- (3) The Company shall submit a report to the Minister at quarterly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning its implementation of the provisions of this Clause together with a copy of any report received by the Company pursuant to subclause (2) during that quarter or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.
- (4) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies in connection with the scheduled works that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

Supply of timber

10. (1) (a) The State shall ensure that the Executive Director shall supply to the Company over a 20 year period not less than 5,500,000 and up to 6,000,000 cubic metres of log timber in accordance with log specifications, at rates and upon reasonable and commercial terms and

conditions to be agreed between the Executive Director and the Company with provision for an extension by the Company of the said term for a further term of 20 years subject to the capacity of the State to supply log timber within the limits of good forest management over such further term and the Executive Director is hereby empowered to enter into such agreement.

- (b) If the Company desires an expansion of the capacity of the pine log sawmill above 400,000 cubic metres per annum the State shall investigate its capacity to supply to the Company upon reasonable and commercial terms and conditions further quantities of log timber within the limits of good forest management as it is at that time able to supply from the State softwood forest or, if the State determines that the requisite supplies are not available from that source then such other forest under its control, if any, as may be a practicable and commercial source of supply for the Company having regard for the place or places of its operation.
- (2) For the purpose of subclause (1), subsection (2) of section 91 of the CALM Act 1984 shall be deemed to be modified by the deletion of "15 years" and the substitution of the following -
"40 years".
- (3) The State shall ensure that the Executive Director shall not contract to supply from State softwood forest *Pinus radiata* or *Pinus pinaster* of sawlog quality suitable for the production of sawn timber by the Company at the pine log sawmill to a

third party on terms more favourable on the whole to the third party than those under which the Company is being supplied pursuant to subclause (1) without similar terms being made available to the Company.

Bunnings commitment

11. (1) Bunnings agrees with the State that Bunnings and its relevant related bodies corporate shall contract with the Company on reasonable commercial terms to sell to the Company all sawlog quality timber from the Bunnings softwood plantations at prices equivalent to the prices payable by the Company to the Executive Director under the agreement to be entered into in accordance with Clause 10.
- (2) The contract referred to in subclause (1) will also contain terms to the following effect:-
 - (a) nothing in the contract shall restrict or affect the manner in which Bunnings or its related bodies corporate may manage the Bunnings softwood plantations from time to time. Without limiting the generality of the foregoing, Bunnings or any of its related bodies corporate may at any time utilise any of the trees on the Bunnings softwood plantations for the purposes of producing chip logs or round logs;
 - (b) if to do so would increase the financial value of the Bunnings softwood plantations, Bunnings or its related bodies corporate may remove trees from the Bunnings softwood plantations;

- (c) Bunnings or its related bodies corporate (as the case may be) shall take reasonable steps to preserve their rights under any contracts existing as at the date of this Agreement with third parties in respect of sawlog quality timber which may be supplied to the Company;
- (d) Bunnings and its related bodies corporate shall be free to sell any Bunnings softwood plantation from time to time:-
 - (i) if the trees have previously been removed from it in accordance with paragraph (b) of this subclause; or
 - (ii) if the Purchaser delivers to the Company an agreement in a form which the Company may reasonably require, agreeing to be bound by and to perform and observe all of the obligations of Bunnings or its related bodies corporate as the case may be, to supply sawlog quality timber to the Company.

WESFI commitment

- 12. (1) WESFI agrees with the State that WESFI and its relevant related bodies corporate shall contract with the Company on reasonable commercial terms to sell to the Company all sawlog quality timber from the WESFI softwood plantations at a price equivalent to the price payable by the Company to CALM in accordance with the agreement to be entered into in accordance with Clause 10.
- (2) The contract referred to in subclause (1) will also contain terms to the following effect:-
 - (a) nothing in the contract shall restrict or affect the manner in which WESFI or its related bodies corporate may manage the

WESFI softwood plantations from time to time. Without limiting the generality of the foregoing, WESFI or any of its related bodies corporate may at any time utilise any of the trees on the WESFI softwood plantations for the purposes of producing chip logs or round logs;

- (b) if to do so would increase the financial value of the WESFI softwood plantations, WESFI or its related bodies corporate may remove trees from the WESFI softwood plantations;
- (c) WESFI or its related bodies corporate (as the case may be) shall take reasonable steps to preserve their rights under any contracts existing as at the date of this Agreement with third parties in respect of sawlog quality timber which may be supplied to the Company;
- (d) WESFI and its related bodies corporate shall be free to sell any WESFI softwood plantation from time to time:-
 - (i) if the trees have previously been removed from it in accordance with paragraph (b) of this subclause; or
 - (ii) if the Purchaser delivers to the Company an agreement in a form which the Company may reasonably require, agreeing to be bound by and to perform and observe all of the obligations of WESFI or its related bodies corporate as the case may be, to supply sawlog quality to the Company.

Roads

13. (1) The Company shall -
- (a) be responsible for the cost of the construction and maintenance of all its private roads used in its activities hereunder;
 - (b) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles other than those engaged upon the Company's activities and its invitees and licensees from using the private roads; and
 - (c) at any place where any private roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Railways Commission as the case may be.

Maintenance of public roads

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

Upgrading of public roads

- (3) (a) In the event that for or in connection with the Company's activities hereunder the Company or any person engaged by the Company uses or wishes to use a public road (whether referred to in subclause (2) or otherwise) which is inadequate for the purpose, or any use by

the Company or any person engaged by the Company of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear) then the Company shall pay to the State or the local authority as the case may require the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such public road by others.

- (b) It is declared and agreed for the purposes of this subclause that the Executive Director supplying log timber to the sawmill site pursuant to the agreement referred to in subclause (1) of Clause 10 is not a person engaged by the Company referred to in paragraph (a) of this subclause.

Transport permits

- 14. Subject to the observance of all statutory requirements by the Company, the Executive Director and persons carting logs for the Company or the Executive Director (as the case may require), those persons shall be issued with extra-mass and overlength vehicle permits by the Commissioner of Main Roads appropriate to the road transport routes used by the Company, the Executive Director or other persons aforesaid as the case may be and as may be required to enable the efficient cartage of logs to the sawmill site.

Power

- 15. (1) The Company shall confer with the State Energy Commission with respect to the Company's power requirements from time to time for the Company's operations at the sawmill site.

- (2) The Company and the State Energy Commission shall enter into arrangements for the provision of power to the sawmill site if required during the currency of this Agreement on the terms and conditions to be negotiated between them.

Water

16. The water requirements of the Company for its operations at the sawmill site shall be obtained in accordance with the provisions of the Water Authority Act 1984 or other relevant Act.

No discriminatory rates

17. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the Company's pine log sawmill operations on the sawmill site nor will the State take or permit to be taken by any such authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement.

Zoning

18. (1) The State shall ensure after consultation with the local authority having jurisdiction in respect of the sawmill site that the sawmill site shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local or other authority of the State on the ground that such activities are contrary to any zoning by-law regulation or order.

Surrounding land

- (2) (a) The State shall ensure in respect of the land shown coloured blue on the said plan marked "A" that the zoning thereof shall not be changed during the currency of this Agreement to a zoning that is determined by the Minister for Planning, after consultation with the Minister and the relevant local authority, to be incompatible with or likely to restrict or adversely affect the activities of the Company under this Agreement.
- (b) The Minister may in his discretion extend the provisions of paragraph (a) of this subclause from time to time to include some or all of the land shown coloured brown on the said plan marked "A".
- (c) In relation to the lands to which this subclause applies the State shall have due regard to the Preston Industrial Park Structure Plan as adopted by the Minister for Planning from time to time.

Resumption for the purposes of this Agreement

- (3) The State may as and for a public work under the Public Works Act 1902, resume the whole or any part or parts of the land referred to in paragraph (a) of subclause (2) and any land to which the provisions of that paragraph are extended pursuant to paragraph (b) of subclause (2) where the Minister determines that the same should be acquired for the purpose of providing land for a buffer to the sawmill site and notwithstanding any other provisions of that Act the State may sell lease or otherwise dispose of that land to the Company or other person and the provisions of

subsections (2) to (7) inclusive of section 17 and section 17A of that Act shall not apply to or in respect of that land or the resumption thereof.

Assignment

19. (1) Subject to the provisions of this Clause the Company WESFI or Bunnings may at any time assign mortgage charge sublet or dispose of to any company or persons with the consent of the Minister the whole or any part of their respective rights hereunder and of their respective obligations hereunder subject however in the case of an assignment subletting or disposition to the assignee sublessee or donee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company WESFI or Bunnings as the case may require to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company WESFI or Bunnings as the case may be shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement PROVIDED THAT the Minister may agree to a release from such liability where the Minister considers such release will not be contrary to the interests of the State.

Variation

20. (1) The parties to this Agreement may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

Force majeure

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

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

Power to extend periods

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

Determination of Agreement

23. (1) In any of the following events namely if -
- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement;
or
 - (ii) the Company abandons or repudiates this Agreement or its activities under this Agreement

and such default is not remedied or such activities resumed within a period of 180 days after notice is given by the State as

provided in subclause (2) or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3); or

- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under Clause 19

the State may by notice to the Company determine this Agreement.

- (2) The notice to be given by the State to the Company in terms of paragraph (a) of subclause (1) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination.
- (3)
 - (a) If the Company contests the alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) the Company shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.
 - (b) If the question is decided against the Company, the Company shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in paragraph (a) of subclause (1) shall not have been remedied

after receipt of the notice referred to in that subclause within the period specified in that paragraph or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

Effect of cessation or determination of Agreement

24. On the cessation or determination of this Agreement -

- (a) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given under this Agreement;
- (b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

Environmental protection

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

Indemnity

26. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its activities hereunder 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 PROVIDED THAT subject to the provisions of any other relevant Act such indemnity shall not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

Commonwealth licences and consents

27. (1) The Company shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to it of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Company to enter into this Agreement and to perform any of its obligations hereunder.

- (2) On request by the Company the State shall make representations to the Commonwealth or to the Commonwealth constituted agency authority or instrumentality concerned for the grant to the Company of any licence or consent mentioned in subclause (1).

Subcontracting

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

Stamp duty exemption

29. (1) Subject to subclause (2) the State shall exempt from stamp duty which but for the operation of this Clause would or might be chargeable on the conveyance or transfer by WESPINE Lumber Pty. Ltd. ACN 008 854 304 to the Company of the land comprising the sawmill site and the buildings and fixtures thereon and any agreement relating thereto PROVIDED THAT such document or documents are executed before 31 December 1992.
- (2) The amount of exemption of stamp duty under this Clause shall not exceed \$225,000 and if the stamp duty on the said document or documents exceeds that amount the Company shall pay the duty exceeding \$225,000 to the State.
- (3) If prior to the date on which the Bill referred to in Clause 3 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on the said document or documents the State when such Bill is passed as an Act shall

on demand refund the stamp duty paid or pay the said amount of \$225,000 as the case may require to the person who paid the stamp duty.

Arbitration

30. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party under this Agreement or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the Commercial Arbitration Act 1985 and notwithstanding section 20(1) of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties under this Agreement and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation

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

Notices

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

Term of Agreement

33. Subject to the provisions of subclause (6) of Clause 6 and Clauses 23 and 24, this Agreement shall expire on the expiration or sooner determination of the agreement for supply of timber between the Executive Director and the Company referred to in subclause (1) of Clause 10 PROVIDED HOWEVER that if the said agreement determines prior to the expiration of the term or an extended term thereof through no fault of the Company the Minister and the Company may

agree that this Agreement (other than Clauses 10, 11 and 12) may continue for the balance of the term or extended term as the case may be that was current immediately before the determination.

Applicable law

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

THE SCHEDULE

The upgrade of the pine log sawmill will occur over ten years in a series of stages or modules, each of which represents a discrete lift in plant capacity to match the increasing quantities of pine sawlogs becoming available.

First Stage

This will increase annual log input capacity by 80,000m³ up to 150,000m³, and will be completed in 1992/93. The First Stage will involve the installation of:-

1. a new high temperature kiln. This will double the drying capacity and will operate 24 hours per day on a 7 day week basis;
2. a new debarker, which will be part of a new scanner/sorter line. The new line will operate on a single shift, and debark and scan logs in order to determine the input volume for payment purposes; and
3. a new moulder with input and output conveyors as necessary to allow the upgrading of the surface finish on furniture grade timber.

The green mill and dry mill will operate on a two shift basis, while the high temperature kilns will operate continuously.

Second Stage

This will increase annual log input capacity by 50,000m³ up to 200,000m³, and will be completed in 1994/95. The Second Stage will involve:-

1. the replacement of existing green mill equipment as below:-
 - (a) the present main twin band saw will be replaced with a quad reducer bandsaw, and
 - (b) the present single band resaw and edger will be replaced with optimising edger;
2. the installation of a rotary gang saw;
3. the installation of a bin/sorter with an optimising trimmer. This will improve the handling of timber and improve productivity;
4. the upgrading of the dry mill with a new moulder and more effective timber handling equipment; and
5. the installation of a new high temperature kiln and reconditioner to meet the increased capacity.

Third Stage

This will increase annual log input capacity by 50,000m³ up to 250,000m³, and will be completed in 1996/97. The Third Stage will involve upgrades to the debarker/sorting line, and a modernising of the original high temperature kiln.

Fourth Stage

This will increase annual log input capacity by 50,000m³ up to 300,000m³, and will be completed in 1998/99. The Fourth Stage will involve:-

1. the installation in the green mill of a curve canter/gang saw and a two saw edger optimiser;
2. an increase in log handling plant capacity;

3. the establishment of a remanufacturing section;
4. modifications to the high temperature kilns; and
5. the installation of a new moulder into the dry mill.

Fifth Stage

This will increase annual log input capacity by 50,000m³ up to 350,000m³, and will be completed in 2000/01. The Fifth Stage will involve:-

1. the installation of a fourth high temperature kiln;
2. the installation of a third reconditioner;
3. the purchase of additional mobile plant; and
4. the extension of the despatch area.

Sixth Stage

This will increase annual log input capacity by 50,000m³ up to 400,000m³, and will be completed in 2002/03. The Sixth Stage will involve refinement of existing mill operations with newly developed equipment where appropriate.

The foregoing is a description of the pine log sawmill upgrade stages (including plant capacities, components and timing thereof) planned as at the date of this Agreement. As technologies, timber supplies, equipment availability, efficiencies, market demands or other circumstances dictate these stages (including plant capacities, components and the timing thereof) may vary or alter during the period of the upgrade.

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

SIGNED by the said)
THE HONOURABLE CARMEN) CARMEN
MARY LAWRENCE) LAWRENCE
in the presence of:)

IAN TAYLOR
MINISTER FOR STATE DEVELOPMENT

THE COMMON SEAL of)
WESPINE INDUSTRIES)
PTY. LTD.)
was hereunto affixed)
by authority of the)
Directors in the)
presence of:)

Director DENIS CULLITY

Director I. C. R. MACKENZIE

THE COMMON SEAL of)
WESTRALIAN FOREST)
INDUSTRIES LIMITED)
was hereunto affixed)
by authority of the)
Directors in the)
presence of:)

Director DENIS CULLITY

Director M. WRIGHT

No. 46] *Dardanup Pine Log Sawmill Agreement Act 1992*

THE COMMON SEAL of)
BUNNINGS LIMITED)
was hereunto affixed)
by authority of the)
Directors in the)
presence of:)

Director D. W. ZINK

Secretary P. J. JOHNSTON