

WESTERN AUSTRALIA

SILICON (PICTON) AGREEMENT AMENDMENT ACT

No. 3 of 1988

AN ACT to amend the *Silicon (Picton) Agreement Act 1987*.

[Assented to 30 June 1988]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Silicon (Picton) Agreement Amendment Act 1988*.

Commencement

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

Principal Act

3. In this Act the *Silicon (Picton) Agreement Act 1987** is referred to as the principal Act.

[*Act No. 93 of 1987.]

Section 1 amended

4. Section 1 of the principal Act is amended by deleting “*Picton*” and substituting the following—

“ *Kemerton* ”.

Section 3 amended

5. Section 3 of the principal Act is amended—

(a) in the definition of “the Agreement”—

(i) by deleting “the Schedule” and substituting the following—

“ Schedule 1 ”; and

(ii) by deleting the full stop and substituting a semicolon; and

(b) by inserting in the appropriate alphabetical positions, the following definitions—

“ “silicon plant site” means the silicon plant site as defined by the Agreement as varied by the Variation Agreement;

“the Variation Agreement” means the Agreement a copy of which is set out in Schedule 2. ”.

Sections 4A and 4B inserted

6. After section 4 of the principal Act the following sections are inserted—

Variation Agreement

“ 4A. (1) The Variation Agreement is ratified and its implementation is authorized.

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

Planning laws modified

4B. (1) Notwithstanding anything in the *Local Government Act 1960* or the *Town Planning and Development Act 1928*, by-laws made under section 248 of the *Local Government Act 1960* as read with the Second Schedule to the *Town Planning and Development Act 1928* do not apply to or in relation to the silicon plant site.

(2) Notwithstanding anything in the *Town Planning and Development Act 1928*, town planning schemes prepared under that Act do not apply to or in relation to the silicon plant site. ”.

Heading to Schedule amended

7. The heading to the Schedule to the principal Act is amended by deleting “SCHEDULE” and substituting the following—

“ SCHEDULE 1 ”.

Schedule 2 added

8. After the Schedule to the principal Act the following Schedule is added—

“ SCHEDULE 2

THIS AGREEMENT is made this sixth day of June 1988 BETWEEN THE HONOURABLE PETER McCALLUM DOWDING, LL.B., 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 BARRACK SILICON PTY. LTD. a company incorporated in the State of Western Australia and having its registered office at 614 Newcastle Street, Leederville (hereinafter called “the Company” which term shall include its successors and permitted assigns) of the second part and BARRACK MINES LIMITED a company incorporated in the State of Western Australia and having its registered office at 614 Newcastle Street, Leederville (hereinafter called “the Guarantor”) of the third part.

WHEREAS:

(a) on the 12th day of November 1987 the parties hereto entered into an agreement relating to the establishment of a plant for the manufacture of silicon which agreement was ratified by the *Silicon (Picton) Agreement Act 1987* and is hereinafter referred to as “the principal Agreement”;

- (b) the parties have agreed that the said plant shall be established at Kemerton in the said State in lieu of Picton as provided in the principal Agreement and desire to vary the principal Agreement for such purpose.

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.
2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.
3. The principal Agreement is hereby varied as follows—

(1) Clause 1—

- (a) by inserting, in the appropriate alphabetical positions, the following definitions—

“ “approved project” means the project as described in the bound volume entitled ‘Project Description’ initialled by or on behalf of the Minister and the Company for the purpose of identification;

“commissioning” means the earlier of—

- (a) 30 days after the second furnace assembly and its auxiliaries have been erected and are ready for operation; or

- (b) completion of 2 consecutive days of operation of the second furnace at the following figures—

(i) Power consumption: Electric power consumption shall not be greater than 12,000 kWh/tonne of silicon metal tapped;

(ii) Production rate: The rate of silicon metal production shall not be less than an average of 1.5 tonnes/hour; and

(iii) Active power of furnace: The active power of the furnace shall not be less than 18MW; ”;

- (b) in the definition of “silicon plant”, by deleting “Picton” and substituting the following—

“ Kemerton ”;

- (c) by substituting for the plan marked “A” referred to in the principal Agreement the plan marked “B” initialled by or on behalf of the parties hereto for the purpose of identification;

- (d) in the definition of “silicon plant site”, by deleting “Picton being the land hatched on the plan marked “A” ” and substituting the following—

“ Kemerton being the land shown shaded on the plan marked “B” ”.

(2) Clause 5—

by deleting Clause 5 and the clause heading thereto and substituting the following clause—

“ Implementation of approved project

5. The Company shall subject to and in accordance with the EP Act and any approvals and licences required under that Act implement the approved project in accordance with the terms thereof. ”.

(3) Clause 6—

by deleting Clause 6 and the clause heading thereto and substituting the following clause—

“ Silicon plant site

6. (1) The State shall cause the silicon plant site to be granted free from encumbrances and vacant possession thereof to be given to the Company at such time and on such terms as agreed between the parties.
- (2) The State shall to the extent reasonably necessary for the purposes of this Agreement allow the Company to have access to the silicon plant site prior to the grant thereof to the Company for the purpose of carrying out surveys and preparatory building works and otherwise as agreed by the Minister.
- (3) If the Company has not proceeded with the implementation of the approved project in accordance with the terms thereof by 31 March 1990, or if this Agreement ceases or determines pursuant to Clause 22 on or before that date as a consequence of a matter mentioned in paragraph (a)(ii) or paragraph (b) of Clause 22(1) without the Company having completed the construction of the silicon plant or as a consequence of a failure by the Company to proceed with the implementation of the approved project in accordance with the terms thereof the Company shall—
 - (a) pay to the State on demand by the State an amount equal to the value of the silicon plant site (but not including the value of any buildings or other improvements erected thereon); or
 - (b) alternatively if the Company so desires and the State agrees, transfer the silicon plant site and all buildings and other improvements erected thereon to the State free from encumbrances and free of cost to the State. ”.

(4) By inserting after Clause 6 the following clauses—

- “ 6A. The State in recognition of the decentralised location of the project and the change in the silicon plant site from Picton to Kemerton has advanced to the Company by way of loan the sum of \$8,000,000 which amount (without interest) shall be repaid by the Company to the State upon demand by the State if the Company has not proceeded to implement the approved project in accordance with the terms thereof by 30 September 1989 (or such later date as may be agreed) or if this Agreement ceases or determines as a consequence of a matter mentioned in paragraph (a) (ii) or paragraph (b) of Clause 22 (1) on or

before 30 September 1989 but otherwise the said loan shall be repaid by the Company to the State by instalments of \$400,000 free of all deductions for every fiscal year in which in excess of 20,000 tonnes of silicon metal is manufactured by the Company at the silicon plant after 30 June 1990 until the said loan is repaid in full. After each fiscal year in which the said minimum quantity of silicon metal has been manufactured as aforesaid, the Company shall forthwith give to the State notice of that fact and the Company shall within 30 days after the date of that notice pay to the State the said instalment in reduction of the said loan.

- 6B. In the event that commissioning of the silicon plant's electric furnaces does not occur by 30 June 1989 or such later date as may be agreed, the State, except where or to the extent to which it can reasonably demonstrate that the delay in commissioning the said furnaces by that date or any delay in commissioning the said furnaces thereafter was due to lack of diligence on the part of the Company or arose otherwise than as a specific result of the transfer of the project from Picton to Kemerton or of a matter associated with the silicon plant site at Kemerton but which would not have been associated with the proposed site at Picton, shall pay to the Company the sum of \$1,100,000 per month (or pro rata for any part of a month) in respect of the period from 1 July 1989 or such later date as may be agreed to whichever shall first occur of the commissioning of the said furnaces or 31 December 1989. Payment of a monthly amount or a pro rated monthly amount under this Clause shall be made at the end of the month in respect of which it is payable and without any deduction or set off whatsoever. ”.

(5) By inserting after Clause 7 the following clause—

- “ 7A. The State in recognition of the expected economic benefits to the State resulting from maximum utilisation of the installed capacity of the silicon plant, shall pay to the Company a production grant by way of incentive of \$400,000 for every fiscal year in which in excess of 20,000 tonnes of silicon metal is manufactured by the Company at the silicon plant after 30 June 1990 providing that the grant shall only be paid in respect of a maximum of 20 such fiscal years. The said grant shall be paid by the State to the Company free from all deductions within 30 days of the receipt by the State of the notice from the Company under Clause 6A. The State may elect by notice to the Company within 14 days of receipt of the said notice to apply the said grant by way of offset against the outstanding balance of the loan under Clause 6A and the Company shall thereupon be relieved from its obligation to pay the instalment then payable in reduction of the said loan. ”.

(6) Clause 8—

by deleting Clause 8 and substituting the following clause—

- “ 8. (1) If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities carried on pursuant to this Agreement beyond those specified in the approved project or in any approved proposals or to mine minerals from the Mining Lease or the Prospecting Licences in addition to silica or to mine silica for the project from other than the Mining Lease or Prospecting Licences it shall give notice of such desire to the Minister and if required by the Minister within 2 months of the giving of such notice shall submit to the Minister within such period as the Minister may reasonably allow detailed

proposals in respect of all matters covered by such notice and such other matters, including matters relating to any of the following, namely—

- (a) the mining of silica;
- (b) the silicon plant;
- (c) manning requirements and manning recruitment policies;
- (d) transport;
- (e) power supply;
- (f) water supply;
- (g) 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;
- (h) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for the protection and management of the environment;
- (i) elements of the project which the Company proposes to be sourced from outside Australia and the reason therefor; and
- (j) where minerals other than silica are the subject of the proposals, specifying those other minerals and the proposed mining methods,

and other relevant information as the Minister may require.

- (2) If the Minister does not require the Company to submit proposals under subclause (1) the Company may, subject to compliance with all applicable laws, proceed with the modification, expansion or variation of its activities carried on pursuant to this Agreement.
- (3) Subject to the EP Act, in respect of proposals pursuant to subclause (1) the Minister shall—
 - (a) approve of the said proposals either wholly or in part without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) not covered by the said proposals; or
 - (c) require as a condition precedent to the giving of his approval of the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that any approval or decision of the Minister under this clause shall be in accordance with the conditions and procedures, if any, to which implementation of the project is made subject pursuant to the EP Act and such approval or decision shall if the case so requires incorporate a requirement that the Company make such alterations to the said proposals as may be necessary to make them accord with those conditions or procedures.

- (4) The Minister shall within two months after service on him of an authority under section 45 (7) of the EP Act if applicable and otherwise within two months after receipt of the said proposals pursuant to subclause (1) give notice to the Company of his decision in respect to the said proposals.
- (5) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (3) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (6) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (3) and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (4) 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 (3) shall not be referable to arbitration hereunder.
- (7) The Company may withdraw its proposals submitted pursuant to subclause (1) 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 proposed modification expansion or variation of its activities as so proposed in those proposals.
- (8) 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 made on arbitration (where the proposals are not withdrawn) as the case may be in accordance with the terms thereof. ”.

(7) Clause 9—

(a) subclause (1)—

- (i) by deleting “matters referred to in paragraph (h) of subclause (1) of Clause 5 and which are” and substituting the following—

“ matters relating to the environment which are referred to in the approved project or which are ”;

- (ii) by deleting “such approved proposals” and substituting the following—

“ the approved project or such approved proposals as the case may be ”;

(b) subclause (2)—

by deleting “the date when the Company’s proposals are approved” and substituting the following—

“ 1 July 1988 ”;

(c) subclause (3)—

(i) by inserting after “additions to” the following—

“ the approved project or ”;

(ii) by inserting after “addressed in” the following—

“ the approved project or ”;

(d) subclause (5)—

by deleting “Clause 5 and Clause 6 (other than subclauses (6) and (7))” and substituting the following—

“ subclauses (3), (4), (5) and (6) of Clause 8 ”.

(8) By inserting after Clause 17 the following clause—

“ 17A. (1) Subject to subclause (2) the design, construction, commissioning and operation of the silicon plant shall comply with the lawful requirements of and all regulations and bylaws of all relevant local and other authorities of the State and the Commonwealth and all Acts of the State and Commonwealth applicable thereto.

(2) Notwithstanding the provisions of any Act, regulation, bylaw, interim development order or town planning scheme the Company may proceed with the development of the silicon plant site and the construction and commissioning of the silicon plant in accordance with the approved project. ”.

(9) Clause 22—

by inserting after subclause (4) the following subclause—

“ (5) Without prejudice to the rights of the State under the preceding subclauses the State may upon any failure by the Company to make payment to the State under Clause 6 (3) or under Clause 6A give notice to the Company specifying the failure and if such failure is not remedied by the Company within 14 days after the giving of such notice the State may by further notice to the Company determine this Agreement. ”.

(10) Clause 23—

by deleting “all moneys” and substituting the following—

“ any moneys due or falling due pursuant to Clause 6 (3) or Clause 6A and all other monies ”.

(11) Clause 28—

subclause (1) paragraph (c)—

(a) by deleting “transfer” and substituting the following—

“ grant ”;

(b) by deleting “subclause (9) of”.

(12) Clause 32 subclause (1)—

by deleting “Clause 6 (3).”.

4. The Guarantor hereby consents to this Agreement.

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

SIGNED by the said
THE HONOURABLE PETER
M'CALLUM DOWDING, LL.B.,
M.L.A. in the presence
of:

} PETER DOWDING

D. PARKER
MINISTER FOR ECONOMIC
DEVELOPMENT AND TRADE

THE COMMON SEAL of
BARRACK SILICON PTY. LTD.
was hereunto affixed by
authority of the Directors
in the presence of:

} [C.S.]

Director V. J. NOVAK

Secretary DONNA COX

THE COMMON SEAL of
BARRACK MINES LIMITED
was hereunto affixed by
authority of the Directors
in the presence of:

} [C.S.]

Director V. J. NOVAK

Secretary DONNA COX