

**CEMENT WORKS (COCKBURN CEMENT LIMITED) AGREEMENT AMENDMENT  
BILL 2015**

**EXPLANATORY MEMORANDUM**

**Section 1**

Contains the short title of the Act.

**Section 2(a)**

Provides for sections 1 and 2 of the Act to come into operation on the day it receives the Royal Assent.

**Section 2(b)**

Provides for the remainder of the Act to come into operation on the day after sections 1 and 2 receive the Royal Assent.

**Section 3**

Specifies that the Act amends the *Cement Works (Cockburn Cement Limited) Agreement Act 1971 (Principal Act)*.

**Section 4**

Provides that section 2 (Interpretation) of the Principal Act is amended by inserting the new definition of “the Fourth Variation Agreement” which means the agreement a copy of which is set out in the Sixth Schedule of the Principal Act.

**Section 5**

Inserts a new section 7 into the Principal Act which:

- (1) ratifies the Fourth Variation Agreement;
- (2) authorises the implementation of the Fourth Variation Agreement; and
- (3) provides for the Fourth Variation Agreement to operate despite any other act or law, without limiting or affecting the application of the *Government Agreements Act 1979*.

**Section 6**

Inserts as the Sixth Schedule to the Principal Act a copy of the Fourth Variation Agreement.

## FOURTH VARIATION AGREEMENT

### PARTIES

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (“**State**”), The Honourable Dean Cambell Nalder, Minister for Transport (“**Port Authorities Minister**”), Fremantle Port Authority (“**Authority**”) and Cockburn Cement Limited (“**Company**”).

### RECITALS

- A. Provides details of the State Agreement dated 18 February 1971 (as amended by an agreement dated 25 August 1971) as originally ratified by the *Cement Works (Cockburn Cement Limited) Agreement Act 1971* and of previous variations made to it. The State Agreement as so amended and varied is called the “**Principal Agreement**”.
- B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation Agreement.

### OPERATIVE CLAUSES

#### Ratification and operation

##### Clause 1(1)

Provides that the Variation Agreement (except clause 1) does not come into operation except in accordance with clause 1(2).

##### Clause 1(2)

States that the Variation Agreement (except clause 1) comes into operation on the day that it is ratified by an Act of Parliament (“**Operative Date**”) unless it terminates prior to that day under clauses 1(4) or 1(5).

##### Clause 1(3)

Requires the State to introduce into Parliament a Bill to ratify this Variation Agreement prior to 30 June 2015 (or at a later date agreed by the parties) and must endeavour to secure its passage as an Act.

##### Clause 1(4)

Provides, unless the parties otherwise agree, for the termination of the Variation Agreement (and without any party having a claim against any other) if by 31 December 2015 the Bill has not been ratified by an Act.

##### Clause 1(5)

Specifies that if the Principal Agreement is determined on a day prior to the Operative Date, then the Variation Agreement will also terminate on and from that day, and without any party having a claim against any other.

### **Variations of the Principal Agreement**

#### **Clause 2(a)**

Amends clause 1(2) (Definitions) of the Principal Agreement by:

- (i) & (ii) deleting the existing reference to "cement and clinker" in the definitions of "alternative material" and "specified mineral", and substituting "cement or clinker".
- (iii) deleting the existing reference to "and clinker" in the definition of "works site", inserting "clinker manufacturing operations may be carried out by the Company in accordance with this Agreement" after "are carried out" and inserting ", excluding any part or parts of such site disposed of by the Company pursuant to clause 7A hereof" before the semi colon at the end of that definition.
- (iv) inserting the following new definition in its appropriate alphabetical position:  
"clinker" defined as clinker manufactured from limestone and other raw materials for use in the manufacture hereunder of cement.

#### **Clause 2(b)**

Amends clause 3(1) (Obligations of the Company) of the Principal Agreement by deleting the existing reference to "and clinker", which removes the Company's obligation to manufacture clinker at the Munster works site. It also inserts a new sentence which allows the Company to manufacture clinker at the Munster works site in accordance with the Principal Agreement, if it wishes.

#### **Clause 2(c), (f) & (g)**

Amends clauses 6(1) (Right to Dredge Shell Sand in Area A), 7(3) and 7(4) (Further obligations of the State) of the Principal Agreement by deleting the existing reference to "cement and clinker manufacturing operations" in each clause and substituting "cement manufacturing operations hereunder, clinker manufacturing operations hereunder" to reflect that clinker manufacture at the Munster works site is no longer an obligation of the Company.

#### **Clause 2(d)**

Amends paragraph (b) of clause 6E (Royalties on Shell Sand or Alternative Material) of the Principal Agreement by deleting "as a neutralising agent" with such deletion to take effect from and including the date those words were inserted in the Principal Agreement (that date being 29 October 2010).

This amendment does not affect the royalty rate paid by the Company, nor the way the royalty is collected by the State. Cockburn Cement currently pays royalties on shell sand at the rates prescribed under the *Mining Act 1978* as payable in respect of limestone used for metallurgical purposes.

**Clause 2(e)**

Amends clause 7(2) (Further obligations of the State) of the Principal Agreement by deleting the existing reference to "and clinker" and inserting "(other than clinker manufacturing operations)" after "and any other operations" to reflect that clinker manufacture at the Munster works site is no longer an obligation of the Company.

**Clause 2(h)**

Amends clause 10 (Use of local labour and material) of the Principal Agreement by numbering the existing provision as subclause (1) and inserts a new subclause (2) which requires the Company, when requested by the Minister, to submit reports to the Minister concerning the implementation of its local content obligations.

The Company currently submits local content reports to the Minister on a voluntary basis and the amendment will formalise this arrangement.

**Clause 2(i)**

Amends clause 10B(1) (Modification, expansion or variation of operations) of the Principal Agreement by deleting the existing references to "cement and clinker" (i) where it appears first and substituting "cement" and (ii) where it appears second and substituting "cement or clinker".

**Clause 2(j)**

Inserts the following new subclauses into clause 10B of the Principal Agreement after subclause (7):

**subclause (8)** requires the Company, if it suspends or ceases to carry out clinker manufacturing operations on the Munster works site, to promptly notify the Minister of the date of such suspension or cessation, and:

- (a) in the case of a suspension, its anticipated recommencement date if and when known;
- (b) in the case of a cessation, its plans to decommission the facilities if and when formulated;

**subclause (9)** requires the Company, if required by the Minister, to consult with the Minister in regard to any suspension or cessation of operations including in relation to any decommissioning plans.

**subclause (10)** enables the Company to recommence clinker manufacturing operations on the Munster works site after suspending or ceasing such operations provided that:

- (a) it has not decommissioned the facilities used in such operations;
- (b) the recommencement will be within the current operational manufacturing capacity of such facilities (confirmed by the Company as being 400,000 tonnes per annum); and

- (c) it has notified the Minister that it intends to recommence its clinker manufacturing operations and of the anticipated recommencement date.

**subclause (11)** requires the Company to give notice to the Minister if it desires to recommence clinker manufacturing operations on the Munster works site after decommissioning the facilities used in such operations or if it desires to significantly modify, expand or otherwise vary the clinker manufacturing operations on the works site beyond the current operational manufacturing capacity of the facilities (i.e. 400,000 tonnes per annum). If required by the Minister, the Company must submit detailed proposals to the Minister within 2 months of giving such notice and the provisions of clauses 10B(2)-(7) of the Principal Agreement shall apply in relation to those proposals.