

IRON ORE (FMG CHICHESTER PTY LTD) AGREEMENT BILL 2006

EXPLANATORY MEMORANDUM

The Iron Ore (FMG Chichester Pty Ltd) Agreement 2005 is Schedule 1 of the Bill.

Section 1 - Short Title

Establishes the title of the Act.

Section 2 - Commencement

Provides for the Act to come into operation on the date of Royal Assent.

Section 3 - Terms used in this Act

Defines the terms used in this Act.

Section 4 - Ratification and Authorisation

Ratifies the Agreement.

Authorises the implementation of the Agreement.

Section 5 – State empowered under Clause 22

Empowers the State to take land as and for a public work under Parts 9 and 10 of the Land Administration Act 1997 and the Public Works Act 1902, subject to and in accordance with section 22 of the Agreement.

Section 6 - Effect on other laws

Provides for the Agreement to operate and take effect despite any other Act or law.

Provides that where any provision of the Agreement expressly or by implication purports to modify or exclude the application or operation of an Act, that modification or exclusion takes effect at law.

Declaration, to avoid doubt, that the provisions of the *Public Works Act 1902* section 96 do not apply to any railway constructed pursuant to the Agreement.

Provides that Section 6 does not limit or otherwise affect the application of the Government Agreements Act 1979.

Parties

The Parties to the Iron Ore (FMG Chichester Pty Ltd) Agreement (**Agreement**) are:

- (a) The Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time (**State**);
- (b) FMG Chichester Pty Ltd ACN 109 264 262 (**Company**); and

- (c) Fortescue Metals Group Ltd ACN 002 594 872 (**Guarantor**).

Recitals

The Recitals set out the background to the entry, by the parties, into the Agreement as follows.

- (a) Recital A states the Company's desire to develop a project for the mining of iron ore, for sale either within Australia or by export to overseas purchasers, within the Defined Area (as defined in the Agreement) which is located in the vicinity of the Chichester Ranges in the Pilbara region of Western Australia.
- (b) Recital B addresses matters related to mining tenure held or to be held by the Company under the Mining Act 1978 (**Mining Act**). It identifies:
- (i) the exploration licences held by the Company and the applications made by the Company for the grant of exploration licences, in respect of the Defined Area, as those licences and applications set out in parts A and B, respectively, of schedule 1 to the Agreement; and
 - (ii) the mining leases that the Company has applied to have granted to it, in respect of part of the land the subject of the exploration licences held by the Company, as those mining leases set out in schedule 2 to the Agreement.
- (c) Recital C refers to the proposed construction and operation by The Pilbara Infrastructure Pty Ltd ACN 103 096 340 (**TPI**) with the assistance of the State in accordance the Railway and Port Agreement (as defined in the Agreement), of the following infrastructure as may be required for the shipping and export of iron ore products, freight goods and other products from the Port of Port Hedland:
- (i) a multi-user railway from a location in the vicinity of the Chichester Ranges to multi-user port facilities within the Port of Port Hedland or to a location near the boundary of that port for delivery to those port facilities; and
 - (ii) a multi-user conveyor and multi-user port facilities.
- (d) Recital D states that the Guarantor and the Company intend the railway and port facilities, upon being constructed, to be used for the transportation, shipping and export of iron ore produced as part of the Company's proposed project.
- (e) Recital E states that the State's purpose, in agreeing to assist the Company in the establishment of its proposed project and in providing a framework for managing future changes to the project upon and subject to the terms of the Agreement, is the promotion of the development of the iron ore industry and the creation of employment opportunities generally in Western Australia.

- (f) Recital F provides that the Agreement is the "Mining Agreement" as defined in clause 1 of the Railway and Port Agreement.

Clause 1 – Definitions

Defines certain terms used in the Agreement.

Clause 2 - Interpretation

Subclause (1)

Provides for how the Agreement is to be interpreted in respect of certain general matters.

Subclauses (2) and (3)

Provide that nothing in the Agreement, including the approval of proposals, is to be construed to exempt the State or the Company from compliance with:

- (a) laws relating to native title; or
- (b) the Environmental Protection Act 1986 (**EP Act**).

Clause 3 - Ratification and operation

Subclause (1)

The State commits to introduce and sponsor a Bill into Parliament prior to 30 June 2006 or such later date as the parties agree.

Subclause (2)

Provides for certain parts of the Agreement to come into operation on different dates, as follows:

- (a) clauses 1, 2, 3, 4 and 6 (2) come into operation on the date of the Agreement;
- (b) Clause 12(3) does not come into operation until the date when both:
 - (i) the Bill referred to in subclause (1) of clause 3 has been passed and comes into operation as an Act; and
 - (ii) Parts 6 and 10 of the Mining Amendment Act 2004 (**Mining Amendment Act**) come into operation; and
- (c) the balance the Agreement does not come into operation until the Bill referred to in subclause (1) of clause 3 has been passed and comes into operation as an Act.

[Note that Parts 6 and 10 of the Mining Amendment Act came into operation on 10 February 2006]

Subclause (3)

Provides that, unless the parties otherwise agree, the Agreement terminates without claim by any party against another party if by 31 December 2006 the Bill referred to in subclause (1) of clause 3 has not commenced to operate as an Act.

Subclause (4)

Provides for the date on which all the provisions of the Agreement operate and take effect despite any enactment or other law, subject to subclause (2)(b) and (5) of clause 3.

Subclause (5)

Provides that clause 12(3) comes into operation and effect on the later of:

- (a) the date on which the Bill referred to in subclause (1) of clause 3 commences to operate as an Act; and
- (b) the date on which Parts 6 and 10 of the Mining Amendment Act come into operation, being 10 February 2006. **[Note that Parts 6 and 10 of the Mining Amendment Act came into operation on 10 February 2006]**

[Note: This effectively repeats subclause 3(2)(b).]

Clause 4 – Initial obligations of the Company**Subclause (1)**

Imposes an obligation on the Company to continue the studies and investigations (including geological investigations to delineate iron ore resources as specified in that subclause) necessary for the purposes of clause 4 and to finalise and submit proposals under clause 8.

Subclause (2)

Imposes an obligation on the Company to keep the State fully informed about the progress and result of its studies under subclause (1) and to supply the Minister (as defined in the Agreement) such relevant information as may be requested from time to time.

Subclause (3)

Imposes an obligation on the Company to co-operate and consult with the State about matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish the Company to undertake.

Subclause (4)

Notwithstanding the dedication of Agreement Mining Tenements to the Project (as each defined in the Agreement) allows the Company to mine iron ore on 2 Mining Leases (as defined in the Agreement) for the purpose of testing mining equipment intended to be used in the Project (as defined in the Agreement), subject to:

- (a) compliance with the Mining Act, the EP Act and any other applicable laws of the State as may be applicable to those mining operations and associated mining operations; and

- (b) a total aggregate amount of earth, soil, rock, stone, fluid or mineral bearing substances excavated, extracted or removed as part of carrying out the testing not exceeding 1,000,000 tonnes.

Clause 5 – Aboriginal Heritage Act 1972

Modifies the Aboriginal Heritage Act 1972 for the purposes of the Agreement to enable the Company to obtain clearances under section 18 of that Act.

Clause 6 – Land to be the subject of this Agreement

Subclause (1)

Identifies the general area of land from which land to be granted to the Company pursuant to the Agreement, whether under the Land Administration Act 1997 (**LAA**), the Mining Act or otherwise, may be drawn, being:

- (a) the Defined Area; and
- (b) another area of land in the vicinity of the Defined Area which is required to support the undertaking of the Project, provided that the Ministerial approval and other requirements specified in subclause (1)(b) of clause 6 are met.

Subclause (2)

Provides for the express dedication, by the Company, for the purposes of the Project and for the duration of the Agreement, of:

- (a) of all Agreement Mining Tenements (as defined in the Agreement) held by the Company at the date of the Agreement; and
- (b) all other Agreement Mining Tenements, which come into existence or become Agreement Mining Tenements at a subsequent date.

All Agreement Mining Tenements are to remain so dedicated to their respective terms including as renewed or extended from time to time.

The intent of the clause is to ensure that all mining tenements which fall within the definition of Agreement Mining Tenements are dedicated to the Project to be utilised for its purposes and in accordance with the requirements of the Agreement. The dedication of each Agreement Mining Tenement is to occur automatically as soon as a mining tenement becomes an Agreement Mining Tenement. This means that any Agreement Mining Tenement which has been granted at the date that the Agreement comes into force, is dedicated from the date of the Agreement coming into force, a mining tenement which is granted subsequently and falls within the definition of Agreement Mining Tenements at the time of its grant, is dedicated upon grant and a mining tenement that would not ordinarily fall within the definition of Agreement Mining Tenements but which is brought within its scope by being approved by the Minister pursuant to clause 12(10), is dedicated upon that tenement being approved by the Minister as an Agreement Mining Tenement.

[Although this is not expressed in the Agreement, by entering into the Agreement and agreeing to its terms, it is clear that the State accepts the dedication provided for in subclause (2) of clause 6.]

Clause 7 – Community development plan

The intent of this clause is to ensure that the development of the Project will create benefits for the persons living in the Pilbara region of Western Australia.

Subclause (1)

Defines the term "community and social benefits" by reference to training, employment, regional development and local procurement of goods, community services and facilities and a regionally based workforce.

Subclause (2)

The Company acknowledges the need for "community and social benefits" to flow from the Agreement.

Subclause (3)

Requires the Company, prior to its submission of detailed proposals for the Project, to prepare and submit to the Minister, a community development plan which will describe the Company's proposed strategies for achieving social and community benefits from the Project. The plan is to be prepared following consultation with local government and is required to include a process for regular consultation with local government. (Being the Shires of Ashburton and East Pilbara)

Subclause (4)

Provides for the Minister to, within one month of receipt of the Company's community development plan, either approve the plan or notify the Company of any changes required to it, and permits either party to refer to arbitration a dispute that arises in respect of those required changes.

Subclause (5)

Deems a plan resulting from a determination made by the arbitrator to be the community development plan approved by the Minister under clause 7.

Subclause (6)

Imposes on the Company an obligation to implement the approved community development plan.

Subclause (7)

Imposes on the Company an obligation to report to the Minister the results of its ongoing consultation with local government.

Subclause (8)

Provides for the State and the Company to confer in relation to any amendment or replacement of the community development plan which is proposed by either of them from time to time, and to agree any amendment or replacement, and deems the amended plan or replacement plan (as the case may be) to be the community development plan approved under clause 7.

Clause 8 – Company to submit proposals

Subclause (1)

Imposes on the Company an obligation to submit by 31 December 2006, detailed proposals with respect to the production, of not less than 10,000,000 and not more

than 45,000,000 tonnes per annum in aggregate and the transportation, of iron ore from Mining Leases then held by the Company and certain other mining leases which the Company has applied to have granted to it. Proposals must comply with the requirements of the EP Act and the Agreement, and can only be submitted after the community development plan required by clause 7 has been approved.

Broadly, proposals are to include the location, area, lay-out, design, quantities, materials and time program for the commencement and completion of construction or the provision (as the case may be) of each of the matters set out in subclauses (a) to (l), which include mining, recovery, beneficiation or further processing and transportation of iron ore by road, rail or conveyor, roads, temporary accommodation and ancillary facilities for the mine, supply and disposal of water and energy supplies, a mine aerodrome, residue disposal, ancillary land tenures, use of local labour, good and services and training of employees, agents and contractors of the Company.

Subclause (2)

Prohibits the following types of proposals:

- (a) any proposal requesting the grant of land tenure that the Company has already applied for under the Mining Act, the LAA or otherwise; and
- (b) any proposal in respect of an Agreement Mining Tenement which is inconsistent with the conditions of grant applicable to that tenement.

Subclause (3)

Provides that proposals may, with the Minister's approval, or must, if required by the Minister, be submitted separately and in any order, and permits the Company to withdraw and resubmit proposals at any time up until the proposals have been approved.

Subclause (4)

Subject to the consents specified in that subclause being obtained and any necessary third party arrangements being entered into, permits proposals to provide for the Company's use of existing facilities, equipment or services.

Subclause (5)

Requires the Company to submit to, and consult with, the Minister in respect of any services, works, materials, plant, equipment and supplies that it proposes to obtain from, or having carried out, outside of Australia, and to provide reasons for this.

Subclause (6)

Imposes on the Company an obligation to provide, at the time it lodges the last proposal under clause 8 and to the Minister's reasonable satisfaction, evidence of the Company's :

- (a) marketing arrangements for the sale of the iron ore the subject of its proposals;
- (b) accreditations under the Rail Safety Act required for the construction of any proposed rail spur; and
- (c) financial capacity and readiness to implement its proposals.

Clause 9 – Consideration of proposals

Subclause (1)

Outlines the process for the Minister's consideration of proposals submitted pursuant to clause 8 and requires such consideration and approval to be subject to the Environmental Protection Act 1986, including by requiring that Minister's decision under subclause 9(1) to incorporate any requirements arising from conditions or procedures imposed pursuant to approval of the proposals under the Environmental Protection Act 1986.

Broadly, subclause (1) empowers the Minister to either:

- (a) approve proposals without qualification or reservation;
- (b) defer consideration or decision of proposals until the Company has complied with the requirements of clause 8(1) and clause 8(6); or
- (c) require as a condition precedent to the giving of approval to proposals, that the Company alter those proposals or comply with any conditions relating to them as the Minister thinks reasonable.

Subclause (2)

Requires the Minister to give notice to the Company of his decision in respect of proposals submitted under clause 8, within 2 months of the later of:

- (a) receipt of those proposals;
- (b) where applicable, service on the Minister of authority to proceed under the Environmental Protection Act 1986;
- (c) completion of all native title processes; and
- (d) the grant of an application for a mining tenement to which the proposal relates and which, on grant, would be an Agreement Mining Tenement.

Subclause (3)

Requires the Minister to consult with the Company and permits the Company to submit new or revised proposals if the Minister defers his decision or requires changes to a proposal or compliance with certain conditions in respect of the proposal.

Subclause (4)

Permits the Company to refer to arbitration a decision of the Minister to defer his decision on, or to require changes to, a proposal or to require the fulfilment of a condition precedent to the giving of approval.

Subclause (5)

Provides for the effect of a decision on arbitration.

Subclause (6)

Provides that the Agreement terminates if all of the following occur:

- (a) all proposals submitted under clause 8 have not been approved by 31 December 2007 (or other date extended under clause 29); and
- (b) the Minister then gives 12 months notice to the Company of his intention to terminate and all proposals are not subsequently approved before the end of that notice period (or other period extended under clause 29).

Subclause (7)

Imposes an obligation on the Company to implement approved proposals, subject to and in accordance with the EP Act.

Subclause (8)

Provides that the Minister may approve a variation to approved proposals during their implementation.

Subclause (9)

Provides that the Minister may extend time periods in clause 8(1) and subclause (6) of clause 9, to enable the Company to comply with native title laws.

Clause 10 – Expansion of Project

Subclause (1)

Provides that if the Company desires to significantly modify, expand or vary its beyond those specified in approved proposals, it must:

- (a) notify the Minister; and
- (b) within 2 months of notification to the Minister, submit to him detailed proposals for all matters covered by the notice and any other matters mentioned in clause 8(1) that the Minister may require;

Subclause (2)

Provides for the process for lodgement and consideration of proposals set out in clauses 8 and 9 (excepting subclauses (5)(a) and (6) of clause 9 and subject to any necessary modifications), to apply to proposals submitted under clause 10.

Further provides that the Company:

- (a) may, by notice to the Minister, withdraw proposals submitted under clause 10:
 - (i) at any time before their approval; or
 - (ii) within 3 months of any arbitration award being made in respect of any decision of the Minister in respect of those proposals; and
- (b) is required to implement proposals approved under clause 10, in accordance with their terms and the E P Act.

It is intended by subclause (2), that the Company must implement proposals approved under clause 10 unless they are validly withdrawn in accordance with the terms of subclause (2).

Clause 11 – Limits on mining

Subclause (1)

Prohibits the Company from producing more than 45,000,000 tonnes of iron ore per annum in aggregate from the Mining Leases without first obtaining the following approvals from the Minister in accordance with the process outlined in clause 11:

- (a) in-principle approval to increase annual production tonnage; and
- (b) approval of detailed proposals to increase annual production tonnage.

Subclause (2)

Provides for:

- (a) the process by which the Company applies to increase the annual production tonnage under the Agreement;
- (b) the Minister's discretion to give or refuse in principle approval to the proposed increase or to give approval conditionally; and
- (c) the Minister's obligation to permit the Company full opportunity to consult with him in respect of a decision to give or refuse in principle approval under subclause (2).

Subclause (3)

Prohibits the Company from giving a notice to increase the annual production tonnage under subclause (2)(a) unless the Minister:

- (a) has approved proposals for the establishment of plant for the production of metallised agglomerates in Western Australia or for an alternative project in lieu of that project; or
- (b) otherwise agrees to receive the notice.

Subclause (3) directs the Minister to have regard to certain specified matters in the course of considering whether or not to agree to receive the Company's notice.

Subclause (4)

Imposes on the Company an obligation to submit detailed proposals for the increase in annual production tonnage, if the Minister has approved, in principle the proposed increase and outlines the process for submitting those proposals.

Subclause (4) further provides that clauses 8 and 9 apply in respect of the detailed proposals for the increase in annual production tonnage, subject to any necessary modifications, and that clause 10(2) also applies where the Company has not submitted all of its proposals for its initial mining project.

Subclause (5)

Requires any proposed increase in annual production tonnage from the Mining Leases to specify the proposed increase in tonnage and provides for certain references to the original annual production tonnage prior to the increase to be deemed to be references to the increased tonnage.

Clause 12 – Agreement Mining Tenements

The primary intent of this clause is to address the status of mining tenements as Agreement Mining Tenements and the extent to which they are governed by the provision of the Mining Act.

Subclause (1)

Provides that the mining leases and general purpose leases for the Project:

- (a) are to be obtained by the Company by way of conversion of all or part of exploration licences which may held by it as Agreement Mining Tenements; and
- (b) will not be sought via the project proposals process or granted pursuant to the Agreement.

Subclause (2)

Outlines the modifications which are made to the Mining Act for the purposes of the Agreement. The provision:

- (a) excludes the application of those provisions of the Mining Act which would entitle a person to object to the grant of the following mining tenements to the Company:
 - (i) a mining leases or general purpose lease granted by way of conversion of all or part of an exploration licence:
 - A. referred to in part A of schedule 1; or
 - B. granted to the Company pursuant to an application referred to in part B of schedule 1; or
 - (ii) any mining tenement wholly within the Defined Area the grant of which is provided for in approved proposals;
- (b) modifies section 65(1a) of the Mining Act;
- (c) excludes any right of the Company under the Mining Act 1978 to be granted retention licences in respect of any portion of a mining lease or an exploration licence which is an Agreement Mining Tenement; and
- (d) modifies Mining Regulation 23AB for the purposes of its application to an exploration licence that is an Agreement Mining Tenement by inserting a new ground for extension of the exploration licence.

Subclause (3)

Subclause (3) does not come into operation until Parts 6 and 10 of the Mining Amendment Act come into operation. The subclause outlines modifications to certain sections which will be inserted in the Mining Act after the Mining Amendment Act comes into operation. These modifications include:

- (a) deleting new section 120AA in respect of the applications for mining leases referred to in schedule 2 and any other applications by Company for mining leases under the Mining Act which if granted would be Agreement Mining Tenements, [***the intent of which is that the Company will not be able to apply for a reversion licence application in respect of any of the above mining lease applications***];
- (b) limiting the application of new subsection 6(1a) (including pursuant to section 90(1)), to the extent it may prevent the Minister from referring for assessment under Part IV of the E P Act any a proposal submitted pursuant to clauses 8, 10 or 11 of the Agreement;
- (c) inserting a new subsection (c) in new subsection 6(1d), (including for the purposes of its application pursuant to section 90(1)), [***the intent of which is to make it clear that section 38 of the Environmental Protection Act 1986 will apply to proposals submitted pursuant to the Agreement in respect of certain mining leases and general purpose leases granted pursuant to the Mining Act 1978***];
- (d) amending the definition of “relevant mining proposal” in new section 82(1a) of the Mining Act 1978 to include an approved proposal;
- (e) inserting new words to qualify the application of new section 82A(2) (including pursuant to section 90(4)), [***the intent of which is that the condition of grant imposed by that subsection on certain mining leases and general purpose leases will not apply in respect of any mining leases and general purpose leases on which the mining operations are proposed to be carried out pursuant to approved proposals under the Agreement***] ; and
- (f) deleting new section 118A, [***the intent of which is that the Company will not be permitted to authorise mining by a third party on an Agreement Mining Tenements otherwise than as provided in the Agreement***].

Subclause (4)

Outlines general variations to the usual requirements of the Mining Act 1978 in relation to Agreement Mining Tenements. These variations include:

- (a) the requirements for assignment, mortgaging, charging, subletting, parting with possession or disposal of an Agreement Mining Tenement to be gained by the Agreement;
- (b) an exemption from the expenditure obligations imposed by or under the Mining Act;
- (c) the process for granting an extension of the term of an Agreement Mining Tenement or an exemption from the requirement of section 65 of the Mining Act in respect of an exploration licence which is an Agreement Mining Tenement, including by requiring the Minister of Mines (as defined in the Agreement) to consult with the Minister in respect of those matters; and

(e) the forfeiture of an Agreement Mining Tenement (other than exploration licence, in regard to failure to surrender land in accordance with the Mining Act), to be governed by the Agreement.

Subclause (5)

Prohibits the Company from surrendering any part of an Agreement Mining Tenement without the prior consent of the Minister, except under section 65 of the Mining Act.

Subclause (6)

Outlines the Company's obligations to lodge certain periodical reports in respect of its operations on Agreement Mining Tenements.

Subclause (7)

Imposes an obligation on the Company to grant certain rights of access to the State and third parties with the consent of the State, in respect of Agreement Mining Tenements or other land tenure granted pursuant to the Agreement, subject to such access not unduly prejudicing or interfering (in the Minister's opinion) with the activities of the Company under the Agreement.

Subclause (8)

Permits the Company to surrender to the State, with the prior consent of the Minister, any portion or portions of the Mining Leases and provides for abatement of future rent in respect to the area surrendered.

Subclause (9)

Grants certain rights to the Company to obtain sand clay and gravel from the Mining Leases without payment of royalties, for use in the construction or maintenance of works in accordance with approved proposals.

Subclause (10)

Provide for the Minister, after consulting the Minister for Mines, to approve a mining tenement held by the Company within or in the vicinity of the Defined Area as an Agreement Mining Tenement.

Subclause (11)

Imposes an obligation on the Company to progressively explore and carry out geological investigations for iron ore on the Mining Leases and exploration licences which are Agreement Mining Tenements.

Clause 13 – Royalties

Provides that the general provisions of the Mining Act 1978 in respect of royalties apply to minerals obtained from Agreement Mining Tenements, except in respect sand, clay and gravel that the Company takes from the Mining Leases in accordance with subclause 12(9).

Clause 14 – Transportation by rail

Subclause (1)

Provides for the construction and maintenance of a rail spur line (including necessary loops, sidings, crossings, points, bridges signalling switches and other works) in accordance with approved proposals, the Rail Safety Act 1998 and the State having

assured to the Company all necessary rights in or over Crown lands for those purposes.

Subclause (2)

Imposes obligations on the Company in respect of the railway spur line referred to in subclause (1):

- (a) to keep the railway spur line in operation;
- (b) to ensure its safe and proper operation in compliance with applicable laws; and
- (c) to ensure that the obligations imposed under the Rail Safety Act on an owner and an operator are complied with.

Further provides expressly that nothing in the Agreement intends to limit or exclude the application the Rail Safety Act.

Subclause (3)

Imposes requirements on the Company in respect of crossings for livestock, roads, other railways, conveyors, pipelines and other utilities which may intersect the rail spur line referred to in subclause (1).

Subclause (4)

Imposes a requirement on the Company to transport passengers and carry the freight of the State and third parties (including the iron ore and iron ore products of third parties) over the railway spur line referred to in subclause (1), if reasonably required to do so and subject to the matters addressed in subclause (4). Expressly provides that the railway spur line will not be deemed to be a common carrier at law or otherwise.

Subclause (5)

Provides a process for the Railways Access Act and Railways Access Code to be applied to any railway spur constructed under the Agreement.

Subclause (6)

Imposes an obligation on the Company to maintain the railway spur line referred to in subclause (1) in good repair, working order and condition.

Subclause (7)

Prohibits the Company from selling or disposing of any part of the railway spur line referred to in subclause (1) without the prior consent of the Minister, other than for the purpose of maintenance, repair, upgrade or renewal.

Clause 15 – Private and public roads

Subclause (1)

Provides that the Company is responsible for the construction and maintenance of private roads used in its activities under the Agreement and must erect signposts and take reasonable steps to prevent other persons and vehicles from using the private roads and provide protection and signposting where its roads intersect public roads or private railways, as may be required by the Commissioner of Main Roads or the

railway owner (as the case may be). The Company is required to provide for those matters at its cost.

Subclause (2)

Provides that the State is responsible for the maintenance (to the standard specified in the subclause) of public roads which are under the control of the Commissioner of Main Roads or of a local government and are used by the Company for the purposes of the Agreement.

Subclause (3)

Provides for the Company to, in certain circumstances, pay for or contribute (on an equitable basis) to the costs of upgrading public roads used by the Company (or on its behalf) in connection with its activities under the Agreement.

Subclause (4)

Authorises the State to resume and dedicate as a public road, a private road constructed by the Company, after consultation with the Company and provided this does not, in the Minister's opinion, unduly prejudice or interfere with the activities of the Company under the Agreement. The subclause requires that the State pay a reasonable amount to the Company for the resumption.

Clause 16 – Electricity

Authorises the Company, for the purpose of its activities on or near the Mining Leases and in accordance with proposals approved under the Agreement, the Electricity Act 1945 and any other relevant Act, to install and operate electricity generation equipment on, and transmit electricity between or in the vicinity of, the Mining Leases.

Clause 17 – Water

Subclause (1)

Imposes an obligation on the Company to use water obtained from dewatering on the Mining Leases for its purposes under the Agreement, to the fullest extent reasonably practicable, and provides that the Company is not exempted from liability in connection with extraction of water from Agreement Mining Tenements or by dewatering or any discharge or escape of water obtained by dewatering from the Agreement Mining Tenements.

Subclause (2)

Provides that, except as otherwise specified in the remainder of clause 17, the general laws applicable respect of rights in water, the supply and discharge of water and the supply of water services water apply in respect of the water requirements for the Project.

Clause 18 – Ancillary titles

Provides for the State, on application by the Company within 3 months of the approval of proposals submitted under clause 8, 10 or 11, to grant (or arrange for the appropriate authority or other interested instrumentality of the State to grant) to the Company, leases, licences, easements and rights of way for the purposes of the Company's activities under the Agreement, in accordance with the relevant approved

proposals the terms of the Agreement. The clause contemplates that ancillary titles may be granted for the accommodation area, mine aerodrome, rail spur line, conveyor, private roads, water pipelines, pumping installations and reservoirs, power transmission lines, radio and communication sites and plant site areas.

Clause 19 – Use of local labour professional services and materials

Subclause (1)

Details the obligations of the Company with respect to the use of labour and professional services within Western Australia and Australia, giving suitably qualified Western Australian and Australian suppliers, manufacturers and contractors fair and reasonable opportunities to tender or quote for works and giving preference to contracts and orders that include participation by Western Australian or Australian suppliers, manufacturers and contractors.

Subclause (2)

Imposes an obligation on the Company to include the same local content obligations as outlined subclause (1) of clause 20, in contracts with third parties, except as otherwise agreed by the Minister.

Subclause (3)

Imposes an obligation on the Company to submit reports, to the Minister, concerning the implementation of the local content requirements in clause 20.

Subclause (4)

Imposes an obligation on the Company to keep the Minister informed in respect of any services, works, materials, plant, equipment and supplies for the Project proposed to be obtained from or carried out outside Australia and to consult with the Minister as and when required by him with respect to those matters.

Clause 20 – Further processing

Subclause (1)

Imposes an obligation on the Company to undertake ongoing investigations during the term of the Agreement, into the technical and economic feasibility of establishing a plant for the production of metallised agglomerates within Western Australia and to submit reports to the Minister in respect of those investigations, on or before the earlier of the date 7 years after the Project first produces iron ore or the date the 100 millionth tonne of iron ore is transported from the Mining Leases.

Subclause (2)

Imposes an obligation on the Company to submit proposals for the establishment of the plant referred to in subclause (1), for an annual production capacity of metallised agglomerates of not less than 2 million tonnes within 3 years of submission of proposals and not less than 3 million tonnes within 8 years of submission of proposals. The clause specifies the dates for submission of proposals, depending on the date on which iron ore is first transported from the Mining Leases or a specified tonnage is achieved and whether proposals are postponed under subclause (3).

Subclause (3)

Permits the Company to apply to the Minister to postpone the submission of proposals pursuant to subclause (2) of clause 21, for a period 3 years, where it considers that the establishment of the metallised agglomerates plant is not economically feasible. Authorises the Minister to either:

- (a) grant the postponement, where he is satisfied that there are reasonable grounds for it; or
- (b) at the request of the Company within 2 months of the Minister's notification that he does not agree with the postponement, appoint a tribunal to decide (in accordance with the Agreement's arbitration provisions) whether or not the metallising operation is economically feasible, taking into account certain specified matters.

Subclause (4)

Provides for the process for consideration and approval of proposals submitted under subclause (2). The Minister is required, within 2 months of receipt of proposals:

- (a) to notify the Company of his approval of proposals; or
- (b) to notify the Company of his objections, or alterations he requires to the proposals and, in that case:
 - (i) the Minister must afford the Company an opportunity to consult with to submit new proposals; and
 - (ii) if the Company and the Minister fail to agree proposals within 2 months of the Company's receipt of the Minister's notice, the Company may refer the matter to arbitration and if the question is decided in favour of the Company, the Minister is be deemed to have approved the proposals.

Subclause (5)

Imposes an obligation on the Company to complete the construction of the metallised agglomerates plant in accordance with its approved proposals and to continue to produce metallised agglomerates from it (at not less than the rates specified in subclause (2)) for as long as it continues to transport iron ore from the Mining Leases.

Subclause (6)

Provides for the Company to apply to the Minister for his approval of an alternative project, in lieu of all or some part of the Company's obligations to establish a metallised agglomerates plant, and requires the Company to implement the alternative project in accordance with that approval.

Further provides that the Company's obligations under subclause (2) of clause 21 only cease to apply if its alternative project (or projects) represent a value approximately equivalent to the value of a plant for the production of 2 million tonnes of metallised agglomerates per annum.

Subclause (7)

Clarifies the use of the expressions "Mining Leases" and "alternative project" used in certain subclauses of clause 21 and the iron ore produced from Agreement Mining Tenements which is to be counted for the purposes of calculating the amounts referred to in subclauses (1) and (2).

Clause 21 – No discriminatory charges

Obliges the State, except as otherwise provided in the Agreement, to ensure the titles, property or other assets, products, materials or services used or produced by the Company or through its activities under the Agreement, are not subjected to discriminatory rates, taxes or charges by the State or any of its agencies or instrumentalities or any local government or other authority of the State. The conferral of rights on parties to Government agreements is to be disregarded in applying this clause.

Clause 22 – Taking of land for the purposes of this Agreement**Subclause (1)**

Empowers the State to take land for the purposes of the Project, as a public work under the LAA and the Public Works Act 1902 (**Public Works Act**), unless this would be contrary to the Railway and Port Agreement or other Government agreement entered into before the submission of proposals to take that land.

Subclause (2)

Modifies the operation of the LAA and the Public Works Act.

Subclause (3)

Provides for the Company to pay compensation in respect of any land taken for the purposes of the Agreement, including compensation payable to holders of native title rights and interests in the land.

Clause 23 – No taking of land

Provides assurance to the Company, subject to its performance of the Agreement, against:

- (a) resumption, without the Company's consent, of the Company's works, installations, plant, equipment or other property the subject of, or used for the purposes of the Agreement; and
- (b) the creation of roads, right-of-ways, water rights or easements over or in respect of any lands which may in the Minister's opinion unduly prejudice or interfere with the Company's activities under the Agreement.

Clause 24 – Commonwealth licences and consents

Imposes an obligation on the Company to apply for licences and consents from the Commonwealth (including its agencies, authorities or instrumentalities) necessary to

enable or permit the Company to enter into, and perform its obligations under, the Agreement. Provides for the State, on request by the Company, to make representations to the Commonwealth for the grant to the Company of such licences and consents.

Clause 25 – Zoning

Obliges the State to ensure, after consultation with the relevant local government, that any Agreement Mining Tenement or other lease, licence or title granted pursuant to the Agreement remain zoned for use or otherwise protected so that the Company's activities under the Agreement may be carried on without interference or interruption on the ground that such activities are contrary to any zoning by-law regulation or order.

Clause 26 – Assignment

Subclause (1)

Provides for the assignment, mortgaging, charging, subletting or disposition by the Company of rights under the Agreement subject to the other provisions of clause 26 and with the prior consent of the Minister. Further provides that an assignment, sublease or disposition will be subject to the assignee, sublessee or disponent (as the case may be) executing a deed of covenant, in favour of the State, in respect of its performance of the Company's obligations.

Subclause (2)

Provides that notwithstanding subclause (1), the Company remains liable for the performance of its obligation under the Agreement and in respect of the Agreement Mining Tenements or other tenure the subject an assignment, mortgage, subletting or disposition under subclause (1), unless the Minister agrees to approve a release from liability where this would not be contrary to the interests of the State.

Subclause (3)

Provides that notwithstanding the Mining Act, the LAA or the Land Act 1893 (**Land Act**), no assignment, mortgaging, charging, subletting or disposition requires any approval or consent other than under subclause (1) and no equitable mortgage or charge will be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this clause) or because it is not registered under the provisions of the Mining Act, the LAA or the Land Act.

Clause 27 – Variation

Subclause (1)

Provides that the Agreement and any Agreement Mining Tenement or any other lease, licence, easement or other title granted under or pursuant to the Agreement, may be varied from time to time by agreement in writing between the parties for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of the Agreement.

Subclause (2)

Requires any variation to the Agreement to be tabled in both Houses of Parliament within 12 sitting days next following its execution.

Subclause (3)

Details how the variation Agreement may come into operation if the Agreement is not disallowed by either House of Parliament.

Clause 28 – Force majeure

Provides that in the event of occurrence of circumstances beyond the power and control of the Company or the State, the party effected by those circumstances may temporarily suspend its obligations under the Agreement. Sets out examples of such circumstances including inability to sell iron ore or metallised agglomerates, profitably, factors due to overall world economic conditions, or action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State), in addition to the usual force majeure events set out in contractual documents.

Requires the affected party to promptly give notice to the other party of the occurrence of the relevant force majeure event and to use best endeavours to minimise its effects.

Clause 29 – Power to extend periods

Provides for the Minister, at the request of the Company, to extend any dates or periods referred to in the Agreement.

Clause 30 – Determination of Agreement**Subclause (1)**

Provides that the State may terminate the Agreement by notice to the Company if the Company:

- (a) commits a material default or abandons or repudiates the Agreement or its activities under it and does not remedy the matter within the period specified in the subclause; or
- (b) goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction), 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 26 of the Agreement.

Subclause (2)

Requires specified details to be given in a notice of termination under subclause (1) of clause 30.

Subclause (3)

Provides that if the Company contests a notice of default given by the Company under subclause (1):

- (a) the matter is to be decided by arbitration; and
- (b) if the arbitration decision is against the Company and the arbitrator finds there was a genuine dispute, the time for complying with the decision must not be less than 90 days.

Subclause (4)

Enables the State to remedy a default which is not remedied by the Company within the period specified in subclause (1) and to recover costs of so doing from the Company.

Subclause (5)

Provides for termination of the Agreement by mutual consent of the parties, provided that no matter in connection with a failure by the parties to agree under subclause (5) is referable to arbitration.

Clause 31 – Effect of cessation or determination of Agreement

Subclause (1)

Provides that the effect of termination of the Agreement is that the rights of the Company cease in respect of the Agreement and all other rights of the Company or any mortgagee or chargee to, in or under Agreement Mining Tenements (other than any exploration licences then held by the Company) and any other tenure or rights granted under the Agreement.

Requires payment of money due and provides that, other than as provided in the Agreement, no party has any claim against the other in respect of anything arising out of the Agreement.

Subclause (2)

Provides that, on termination of the Agreement, improvements to the land then occupied by the Company in Agreement Mining Tenements [other than those the Company may retain under subclause (1)] are to become the property of the State, without the payment of compensation or consideration freed of all mortgages and encumbrances

Subclause (3)

Provides for the Company to notify the State of its desire to remove, after termination of the Agreement, fixed or movable plant and equipment from land held for the purposes of the Agreement (other than any Agreement Mining Tenements that the Company may hold after termination) and to grant to the State an option to purchase the fixed plant and equipment (prior to removal) within a specified period, at a fair valuation to be agreed between the State and the Company or determined by arbitration.

Clause 32 – Indemnity

Requires the Company to indemnify the State in respect of actions, costs or demands of third parties resulting from activities undertaken by the Company under the Agreement or by third parties on their behalf, except where the State (or its agents) have been negligent.

Clause 33 – Subcontracting

Provides that each of the State or the Company may subcontract to third parties any activity they are authorised or obliged to carry out under the Agreement.

Clause 34 – Arbitration

Subclause (1)

Defines the arbitration process applicable under the Agreement.

Subclause (2)

Arbitration will not apply where the State, the Minister or any other Minister has a discretionary power.

Subclause (3)

Empowers the arbitrator to grant interim extensions to any date or period in the Agreement to preserve rights while a matter is before arbitration.

Clause 35 – Consultation

Requires the Company to consult with and keep the State informed of any action that it proposes to take with any third party, including the Commonwealth, which is likely to significantly affect the overall interest of the State under the Agreement.

Clause 36 – Notices

Specifies how notices are to be given under the Agreement.

Clause 37 – Guarantee of the Company's performance

Provides for:

- (a) the Guarantor to guarantee the Company's performance of its obligations under the Agreement; and
- (b) the Minister to release the Guarantor from the guarantee if the Minister is satisfied that the Company has the necessary financial capacity. Provides for the guarantee to continue even if the Agreement ceases or is terminated.

Clause 38 – Stamp Duty

Subclause (1)

Provides that the State will exempt from stamp duty the following instruments executed or made not more than 2 years after the Agreement commencement date:

- (a) the Agreement;
- (b) any instrument executed by the State pursuant to the Agreement granting any licence, lease, easement or other title to the Company; and

(c) any assignment, sublease or disposition (other than by way of mortgage or charge) made in accordance with clause 26(1).

Subclause (2)

Provides for stamp duty to be refunded to the Company if prior to the commencement date specified for the Agreement, it was assessed and paid on any instrument or other document or transaction referred to in subclause (1).

Clause 39 – Term of this Agreement

Subclause (1)

Provides that the Agreement will expire on the date occurring 50 years after the commencement date specified for the Agreement.

Clause 40 – Applicable law

Provides that the Agreement is subject to the laws of Western Australia.