

Railway (BBI Rail Aus Pty Ltd) Agreement Bill 2017

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Western Australia

LEGISLATIVE ASSEMBLY

**Railway (BBI Rail Aus Pty Ltd) Agreement
Bill 2017**

A Bill for

An Act —

- 1 • **to ratify, and authorise the implementation of, an agreement**
2 **between the State and BBI Rail Aus Pty Ltd, Todd Petroleum**
3 **Mining Company Limited, Todd Offshore Limited and Todd**
4 **Minerals Limited relating to the development of a railway in the**
5 **Pilbara region of the State; and**
6 • **to modify the operation of the *Railways (Access) Act 1998* and the**
7 ***Railways (Access) Code 2000,***
and for incidental and other purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Railway (BBI Rail Aus Pty Ltd) Agreement Act 2017*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) Part 2 and Schedule 1 — on the day after that day;
- (c) Part 3 — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — General provisions about the Agreement**

2 **3. Terms used**

3 In this Part —

4 *Agreement* means the scheduled agreement or, if it is varied in
5 accordance with its terms, that agreement as varied from time to
6 time;

7 *scheduled agreement* means the agreement a copy of which is
8 set out in Schedule 1.

9 **4. Ratification and authorisation**

10 (1) The scheduled agreement is ratified.

11 (2) The implementation of the Agreement is authorised.

12 **5. State empowered under clause 21**

13 The State has power in accordance with clause 21 of the
14 Agreement.

15 **6. Effect on other laws**

16 (1) The Agreement operates and takes effect despite any enactment
17 or other law.

18 (2) If a provision of the scheduled agreement expressly or by
19 implication purports to modify or exclude the application or
20 operation of an enactment for a purpose or in relation to a
21 person or thing, the application or operation of the enactment is
22 modified or excluded for that purpose, or in relation to that
23 person or thing, to the extent or for the period mentioned in the
24 provision or necessary for the provision to have effect.

25 (3) To avoid doubt, it is declared that the provisions of the *Public*
26 *Works Act 1902* section 96 do not apply to the railway
27 constructed pursuant to the Agreement.

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- 1 (4) This section does not limit or otherwise affect the application of
2 the *Government Agreements Act 1979*.

1 **Part 3 — Provisions about access to the railway**
2 **constructed under the Agreement**

3 **Division 1 — *Railways (Access) Act 1998* modified**

4 **7. Modified Act applies in relation to Railway (BBI Rail**
5 **Aus Pty Ltd) Agreement**

6 The *Railways (Access) Act 1998* applies as if amended as set out
7 in this Division in relation to the Railway (BBI Rail Aus Pty
8 Ltd) Agreement.

9 **8. Section 3 modified**

10 (1) In section 3(1) insert in alphabetical order:

11
12 *Railway (BBI Rail Aus Pty Ltd) Agreement* means the
13 Agreement as defined in the *Railway (BBI Rail Aus Pty*
14 *Ltd) Agreement Act 2017* section 3;

15
16 (2) In section 3(1) in the definition of *railways network* before
17 paragraph (c) insert:

18
19 (cb) the railway constructed pursuant to the Railway
20 (BBI Rail Aus Pty Ltd) Agreement; and

21
22 (3) Before section 3(6) insert:

23
24 (5A) Subsections (3) and (4) do not apply to a siding or spur
25 line associated with the railway constructed pursuant to
26 the Railway (BBI Rail Aus Pty Ltd) Agreement.
27

Railway (BBI Rail Aus Pty Ltd) Agreement Bill 2017

Part 3 Provisions about access to the railway constructed under the Agreement

Division 2 Railways (Access) Code 2000 modified

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1 **9. Section 12B inserted**

2 Before section 12 insert:

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4 **12B. Modification of Code for purposes of Railway (BBI**
5 **Rail Aus Pty Ltd) Agreement**

6 (1) The Minister may, under this section, modify the Code
7 for the purposes of its application to the railway
8 constructed pursuant to the Railway (BBI Rail Aus Pty
9 Ltd) Agreement.

10 (2) If, after the *Railway (BBI Rail Aus Pty Ltd) Agreement*
11 *Act 2017* section 9 has come into operation, the railway
12 constructed pursuant to the Railway (BBI Rail Aus Pty
13 Ltd) Agreement is expanded or extended (including by
14 the addition of a spur line), the Minister must, under
15 this section, modify the Code so that it applies to the
16 expansion or extension.

17 (3) Section 5 (where relevant) and sections 10 to 11A do
18 not apply to or in relation to a modification under this
19 section.

20 (4) Modifications under this section are to be made by
21 order published in the *Gazette*.

22 (5) Modifications under or for the purposes of
23 subsection (2) are not amendments of the Code for the
24 purposes of section 9(2) to (6) of this Act.
25

26 **Division 2 — Railways (Access) Code 2000 modified**

27 **10. Modified Code applies in relation to Railway (BBI Rail Aus**
28 **Pty Ltd) Agreement**

29 The *Railways (Access) Code 2000* applies as if amended as set
30 out in this Division in relation to the Railway (BBI Rail Aus Pty
31 Ltd) Agreement.

1 **11. Section 3 modified**

2 (1) In section 3 insert in alphabetical order:

3

4 **Railway (BBI Rail Aus Pty Ltd) Agreement** means the
5 Agreement as defined in the *Railway (BBI Rail Aus Pty*
6 *Ltd) Agreement Act 2017* section 3;

7

8 (2) In section 3 in the definition of *railways network* before
9 paragraph (c) insert:

10

11 (cb) the railway constructed pursuant to the Railway
12 (BBI Rail Aus Pty Ltd) Agreement; and

13

14 **12. Section 55 inserted**

15 At the end of Part 6 insert:

16

17 **55. Transitional provision — Railway (BBI Rail Aus**
18 **Pty Ltd) Agreement**

19 Until the Regulator publishes in the *Gazette* notice of a
20 determination under Schedule 4 clause 3(1)(a)(iib), the
21 weighted average cost of capital for the railway
22 infrastructure referred to in that subparagraph is such
23 percentage as the Regulator fixes by notice published
24 in the *Gazette* under this section.

25

1 **13. Schedule 1 modified**

2 At the end of Schedule 1 insert:

3

4 **Railway (BBI Rail Aus Pty Ltd) Agreement Route**

5 54. All tracks that are part of the railway constructed pursuant to
6 the Railway (BBI Rail Aus Pty Ltd) Agreement.

7

8 **14. Schedule 4 modified**

9 Before Schedule 4 clause 3(1)(a)(ii) insert:

10

11 (iib) the railway infrastructure associated with
12 that part of the railways network described
13 in item 54 in that Schedule; and

14

15 **Division 3 — Expiry of Part**

16 **15. Expiry of Part**

17 (1) In this section —

18 *ACL Undertaking Acceptance Date* has the meaning given in
19 clause 16(1) of the Agreement.

20 (2) This Part expires at the end of the day immediately before the
21 ACL Undertaking Acceptance Date.

22 (3) The Minister must publish in the *Gazette* notice of the ACL
23 Undertaking Acceptance Date.

24 (4) The *Interpretation Act 1984* section 37 applies, under section 39
25 of that Act, to the expiry of this Part subject to
26 clause 16(11)(d)(i) of the Agreement.

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**Schedule 1 — Railway (BBI Rail Aus Pty Ltd)
Agreement 2017**

[s. 3]

2017

THE STATE OF WESTERN AUSTRALIA

and

**BBI RAIL AUS PTY LTD
ABN 44 604 857 392**

and

**TODD PETROLEUM MINING COMPANY LIMITED
NZBN 9429040945767**

**TODD OFFSHORE LIMITED
NZBN 9429030115989**

**TODD MINERALS LIMITED
NZBN 9429030762596**

RAILWAY (BBI RAIL AUS PTY LTD) AGREEMENT 2017

[Solicitor's details]

1 **THIS AGREEMENT** is made this 23 day of January 2017

2 **BETWEEN**

3 **THE HONOURABLE COLIN JAMES BARNETT**, M.Ec., M.L.A., Premier
4 of the State of Western Australia, acting for and on behalf of the said State and
5 its instrumentalities from time to time (hereinafter called "**the State**") of the
6 first part,

7 **BBI RAIL AUS PTY LTD** ABN 44 604 857 392 of Level 3, 151 Macquarie
8 Street, Sydney, New South Wales (hereinafter called "**the Company**") in which
9 term shall be included its successors and permitted assigns) of the second part,
10 and

11 **TODD PETROLEUM MINING COMPANY LIMITED** NZBN
12 9429040945767 of Level 15, The Todd Building, 95 Customhouse Quay,
13 Wellington, New Zealand, **TODD OFFSHORE LIMITED** NZBN
14 9429030115989 of Level 15, The Todd Building, 95 Customhouse Quay,
15 Wellington, New Zealand and **TODD MINERALS LIMITED** NZBN
16 9429030762596 of Level 15, The Todd Building, 95 Customhouse Quay,
17 Wellington, New Zealand (hereinafter each called "**Guarantor**" and
18 collectively "**the Guarantors**") of the third part.

19 **WHEREAS:**

20 **A.** The Guarantors and the Company are investigating the feasibility of
21 the Company constructing and operating a railway from the PIOP
22 mining area loading point to within the proposed Port of Balla Balla
23 on the Pilbara coast of Western Australia for the transport by the
24 Company of iron ore products to the Port with such railway having an
25 initial design capacity of not less than 50 million tonnes per annum.

26 **B.** The Company and associated companies are also investigating the
27 feasibility of constructing and operating iron ore train unloading,
28 materials handling, stockpiling and transshipment facilities at the Port
29 with such facilities having an initial design capacity of not less than
30 50 million tonnes per annum.

31 **C.** The State for the purposes of promoting development of the iron ore
32 industry and employment opportunity generally in Western Australia
33 and for the purpose of promoting the development of multi-user
34 infrastructure facilities in the Pilbara region of Western Australia has

1 agreed to assist the development of the abovementioned railway and
2 associated facilities upon and subject to the terms of this Agreement.

3 **D.** For illustrative purposes and without limiting the terms of this
4 Agreement, the anticipated route and corridor for the railway and
5 associated facilities from the PIOP mining area loading point to the
6 Port is described by the indicative plan in Schedule 1 to this
7 Agreement.

8 **NOW THIS AGREEMENT WITNESSES:**

9 **1. Definitions**

10 In this Agreement subject to the context:

11 "**Access Act**" means the *Railways (Access) Act 1998* (WA);

12 "**Access Code**" means the *Railways (Access) Code 2000* (WA);

13 "**Additional Infrastructure**" means conveyors, stockpile areas,
14 blending and screening facilities, stackers, re-claimers and other
15 infrastructure reasonably required for the loading of iron ore products
16 onto the Railway for transport upon the Railway to the Port;

17 "**advise**", "**apply**", "**approve**", "**approval**", "**consent**", "**certify**",
18 "**direct**", "**notice**", "**notify**", "**request**", or "**require**", means advise,
19 apply, approve, approval, consent, certify, direct, notice, notify,
20 request or require in writing as the case may be and any inflexion or
21 derivation of any of those words has a corresponding meaning;

22 "**approved proposal**" means a proposal approved or deemed to be
23 approved under this Agreement;

24 "**Australian Consumer Law**" means the *Competition and Consumer*
25 *Act 2010* (Cth);

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

28 "**EP Act**" means the *Environmental Protection Act 1986* (WA);

29 "**Government agreement**" has the meaning given in the *Government*
30 *Agreements Act 1979* (WA);

31 "**Government agreement product**" means iron ore produced, or
32 products derived from the processing of iron ore produced, from

- 1 mining tenements, or other titles, granted under or pursuant to, or held
2 pursuant to, a Government agreement;
- 3 **"iron ore products"** includes iron ore of all grades and all products
4 from the processing of iron ore;
- 5 **"LAA"** means the *Land Administration Act 1997* (WA);
- 6 **"LAA Minister"** means the Minister for Lands, a body corporate
7 under section 7 of the LAA;
- 8 **"Lateral Access Roads"** has the meaning given in clause 7(1);
- 9 **"Lateral Access Road Licence"** means a miscellaneous licence
10 granted pursuant to clause 14(1)(b) or clause 14(2) as the case may be
11 and according to the requirements of the context describes the area of
12 land from time to time the subject of that licence;
- 13 **"laws relating to native title"** means laws applicable from time to
14 time in Western Australia in respect of native title and includes the
15 *Native Title Act 1993* (Commonwealth);
- 16 **"local government"** means a local government established under the
17 *Local Government Act 1995* (WA);
- 18 **"Mining Act"** means the *Mining Act 1978* (WA);
- 19 **"Minister"** means the Minister in the Government of the State for the
20 time being responsible for the administration of the Act to ratify this
21 Agreement and pending the passing of that Act means the Minister for
22 the time being designated in a notice from the State to the Company
23 and includes the successors in office of the Minister;
- 24 **"Minister for Mines"** means the Minister in the Government of the
25 State for the time being responsible for the administration of the
26 Mining Act;
- 27 **"month"** means calendar month;
- 28 **"Operative Date"** has the meaning given to it in clause 3(2);
- 29 **"Pilbara Iron Ore Railways"** means each railway constructed under
30 a Government agreement which is located wholly or substantially in
31 one or more of the local government districts of Ashburton, East
32 Pilbara, Port Hedland and Roebourne at the date of this Agreement;

1 **"PIOP mining area"** means the areas which, at the date of this
2 Agreement, are the subject of Mining Lease 47/1451 and Exploration
3 Licence 47/1560;

4 **"PIOP mining area loading point"** means the proposed northerly
5 end point of the conveyor system intended to be constructed upon the
6 land the subject of application for Miscellaneous Licence L47/733
7 and application for Miscellaneous Licence L47/753 by or for the
8 benefit of the PIOP mining area proponent;

9 **"PIOP mining area proponent"** means one or more project
10 proponents undertaking, or who propose to develop, an iron ore
11 mining project within the PIOP mining area;

12 **"Port"** means a port comprising the area or substantially the area
13 depicted in Schedule 5 hereto proposed to be described pursuant to
14 section 24 of the Port Authorities Act and constituted as the Port of
15 Balla Balla under the management and control of the Port Authority
16 and following any such establishment shall mean the area comprising
17 that port from time to time;

18 **"Port Authorities Act"** means the *Port Authorities Act 1999 (WA)*;

19 **"Port Authorities Minister"** means the Minister in the Government
20 of the State for the time being responsible for the administration of
21 the Port Authorities Act;

22 **"Port Authority"** means the Pilbara Ports Authority, a body corporate
23 under the Port Authorities Act;

24 **"Port Facilities"** means the facilities (excluding the Port Railway and
25 associated access roads within the Port Railway Area) within the Port
26 for the unloading of iron ore products from the Railway and for the
27 transport of iron ore products and, with the consent of the Port
28 Authority, other products to a transshipment vessel loading wharf for
29 shipment from the Port;

30 **"Port Railway"** means that part of the Railway within the Port;

31 **"Port Railway Area"** means before the grant of the Port Railway
32 Lease that part or those parts (as the case may be) of the Port the
33 subject of a subsisting agreement pursuant to clause 8(1)(a) and after
34 the grant of the Port Railway Lease, that area or those areas (as the
35 case may be) of the Port from time to time the subject of that lease;

- 1 **"Port Railway Lease"** means:
- 2 (a) a lease granted to the Company pursuant to the Port
3 Authorities Act in respect of all or part of the area or areas (as
4 the case may be) comprising the Port Railway Area
5 immediately prior to such grant and which lease provides for
6 the operation and maintenance of the Port Railway, and the
7 use and maintenance of the access roads to be used by the
8 Company in operating and maintaining the Port Railway,
9 within the area or areas (as the case may be) of the Port the
10 subject of that lease and the term of which lease ends at the
11 same time as the Special Railway Licence; and
- 12 (b) according to the requirements of the context describes the
13 area or areas (as the case may be) from time to time the
14 subject of that lease;
- 15 **"Private Roads"** means Lateral Access Roads and the Company's
16 access roads within the Railway Corridor;
- 17 **"Project"** means the construction and operation under this
18 Agreement, and in accordance with approved proposals, of the SRL
19 Railway, associated infrastructure within the Railway Corridor
20 including access roads and Additional Infrastructure (if any), and of
21 the Lateral Access Roads;
- 22 **"Rail Safety Act"** means the *Rail Safety National Law (WA) Act 2015*
23 (WA);
- 24 **"Railway"** means a standard gauge heavy haul railway initially from
25 the PIOP mining area loading point to the area on which the Port
26 Facilities are or will be located for the transport of iron ore products
27 to the Port together with all railway track, associated track structures
28 including sidings, turning loops, over or under track structures,
29 supports (including supports for equipment or items associated with
30 the use of a railway) tunnels, bridges, train control systems, signalling
31 systems, switch and other gear, communication systems, electric
32 traction infrastructure, buildings (excluding office buildings, housing
33 and freight centres), workshops and associated plant, machinery and
34 equipment and including rolling stock maintenance facilities, terminal
35 yards, depots, culverts and weigh bridges, which railway is or is to be
36 (as the case may be) the subject of approved proposals under
37 clauses 11 and 12 of this Agreement and includes any expansion or

1 extension thereof outside the Port which is the subject of additional
2 proposals approved in accordance with clause 13 and any expansion
3 or extension thereof within the Port which has been approved under
4 the provisions of the Port Railway Lease;

5 "**Railway Corridor**" means, prior to the grant of the Special Railway
6 Licence, the land for the route of the SRL Railway, access roads
7 (other than Lateral Access Roads), Additional Infrastructure (if any),
8 temporary accommodation facilities for the railway workforce, water
9 bores and areas from which stone, sand, clay and gravel may be taken,
10 which land is the subject of a subsisting agreement pursuant to
11 clause 7(1) and after the grant of the Special Railway Licence the land
12 from time to time the subject of the Special Railway Licence;

13 "**Railway Operation Date**" means the date of the first carriage of
14 iron ore products over the initial railway line from the PIOP mining
15 area loading point to the Port Facilities (other than for construction or
16 commissioning purposes);

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

18 "**Special Railway Licence**" means the miscellaneous licence for
19 railway and, if applicable, other purposes, granted to the Company
20 pursuant to clause 14(1)(a), as varied in accordance with clause 14(8)
21 and according to the requirements of the context describes the area of
22 land from time to time the subject of that licence;

23 "**SRL Railway**" means that part of the Railway which is or is to be
24 (as the case may be) located outside the Port;

25 "**SRL Railway spur line**" means a standard gauge heavy haul railway
26 spur line of any length from a mine, or in the vicinity of a mine, in the
27 Pilbara region of the said State connecting to the SRL Railway (and
28 whether to the initial railway line the subject of approved proposals
29 under clauses 11 and 12 or to an expansion or extension thereof which
30 is the subject of additional proposals approved in accordance with
31 clause 13) for the transport of iron ore products upon the Railway to
32 the Port;

33 "**SRL Railway spur line Operation Date**" means in respect of a SRL
34 Railway spur line, the date of the first carriage of iron ore products
35 over that spur line (other than for construction or commissioning
36 purposes); and

1 **"this Agreement", "hereof" and "hereunder"** refer to this
2 Agreement, whether in its original form or as from time to time added
3 to, varied or amended.

4 **2. Interpretation**

5 (1) In this Agreement:

- 6 (a) monetary references are references to Australian currency
7 unless otherwise specifically expressed;
- 8 (b) power given under any clause other than clause 28 to extend
9 any period or date shall be without prejudice to the power of
10 the Minister under clause 28;
- 11 (c) clause headings do not affect interpretation or construction;
- 12 (d) words in the singular shall include the plural and words in the
13 plural shall include the singular according to the requirements
14 of the context;
- 15 (e) one gender includes the other genders;
- 16 (f) a covenant or agreement by more than one person binds, and
17 is enforceable against, those persons jointly and each of them
18 severally;
- 19 (g) reference to an Act includes the amendments to that Act for
20 the time being in force and also any Act passed in
21 substitution therefor or in lieu thereof and the regulations for
22 the time being in force thereunder;
- 23 (h) reference to the Access Code includes the amendments to that
24 code for the time being in force and also any code established
25 or made in substitution therefor or in lieu thereof;
- 26 (i) reference in this Agreement to any other document includes
27 that document as from time to time added to, varied or
28 amended and notwithstanding any change in the identity of
29 the parties;
- 30 (j) reference to a clause or schedule is a reference to a clause or
31 schedule to this Agreement, and a reference to a subclause or
32 paragraph is a reference to the subclause of the clause or

- 1 paragraph of the clause or subclause as the case may be in, or
2 in relation to, which the reference is made;
- 3 (k) "including" means "including, but not limited to"; and
- 4 (l) reference to a "person" includes a body corporate.
- 5 (2) Nothing in this Agreement shall be construed to exempt the State or
6 the Company from compliance with or to require the State or the
7 Company to do anything contrary to any law relating to native title or
8 any lawful obligation or requirement imposed on the State or the
9 Company as the case may be pursuant to any law relating to native
10 title.
- 11 (3) Nothing in this Agreement shall be construed to exempt the Company
12 from compliance with any requirement in connection with the
13 protection of the environment arising out of or incidental to its
14 activities under this Agreement that may be made by or under the EP
15 Act.
- 16 **3. Ratification and operation**
- 17 (1) This Agreement, other than this clause and clauses 1 and 2, does not
18 come into operation except in accordance with subclause (2).
- 19 (2) This Agreement, other than this clause and clauses 1 and 2, comes
20 into operation on the day after the date on which it is ratified by an
21 Act of the Parliament of Western Australia (**Operative Date**) unless,
22 before that day, it terminates under subclause (4).
- 23 (3) The State must introduce in the Parliament of Western Australia
24 before 30 September 2017, or a later date agreed between the parties
25 to this Agreement, a Bill to ratify this Agreement and must endeavour
26 to secure its passage as an Act.
- 27 (4) If by 30 March 2018 or such later date agreed between the parties to
28 this Agreement, this Agreement has not been ratified by an Act of the
29 Parliament of Western Australia then, unless the parties otherwise
30 agree, this Agreement terminates on that date and no party hereto will
31 have any claim against any other party hereto with respect to any
32 matter or thing arising out of, done, performed or omitted to be done
33 or performed under this Agreement.

- 1 **4. Initial obligations of the State**
- 2 (1) The State shall subject to subclause (3) and the adequate protection of
3 the environment (including flora and fauna) and the land affected
4 (including improvements thereon) arrange for the issue of requisite
5 authority under any one or both of (as determined by the State in its
6 discretion):
- 7 (a) section 91 of the LAA; or
- 8 (b) section 182 of the LAA,
- 9 to allow the Company to enter upon Crown land (within the meaning
10 of the LAA and including, if applicable, land the subject of a pastoral
11 lease but excluding land within the Port) to carry out all works to the
12 extent reasonably necessary for the purposes of undertaking its
13 obligations under clause 5(1) (including as applying pursuant to
14 clause 13(2)).
- 15 (2) For the purposes of paragraph (b) of subclause (1), section 182 of the
16 LAA shall apply as if the Project (including a significant
17 modification, expansion or other variation of it for which proposals
18 are required pursuant to clause 13) is a proposed public work for
19 which the LAA Minister is under that section authorised to take
20 interests in land within the meaning of that section.
- 21 (3) The Company acknowledges that it shall be responsible for obtaining
22 all consents of each person whose consent the LAA Minister (acting
23 with the concurrence of the Minister in respect of any such Crown
24 land the subject of a Government agreement) requires for the grant of
25 any requisite authority referred to in subclause (1) and in a form and
26 substance acceptable to the LAA Minister.
- 27 **5. Initial obligations of the Company**
- 28 (1) The Company shall continue field and office geological, geophysical,
29 geotechnical, engineering and environmental investigations and
30 studies and marketing and finance studies and other matters necessary
31 for the purposes of clauses 7 and 8 and to enable it to finalise and to
32 submit to the Minister the detailed proposals referred to in clause 11.
- 33 (2) The Company shall keep the State fully informed in writing at
34 quarterly intervals from the Operative Date as to the progress and
35 results of its operations under subclause (1) and supply to the Minister

1 such information in relation thereto as the Minister may request from
2 time to time.

3 (3) The Company shall co-operate with the State and consult with the
4 representatives or officers of the State regarding matters referred to in
5 subclauses (1) and (2) and any other relevant studies in relation to
6 those subclauses that the Minister may wish the Company to
7 undertake.

8 **6. *Aboriginal Heritage Act 1972 (WA)***

9 For the purposes of this Agreement the *Aboriginal Heritage Act 1972*
10 (WA) applies as if it were modified by:

11 (a) the insertion before the full stop at the end of section 18(1) of
12 the words:

13 "and the expression "**the Company**" means the persons from
14 time to time comprising "the Company" in its capacity as
15 such under the agreement made on or about 23 January 2017
16 between The Honourable Colin James Barnett, Premier of the
17 State of Western Australia acting for and on behalf of the said
18 State and its instrumentalities from time to time, BBI Rail
19 Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum Mining
20 Company Limited NZBN 9429040945767, Todd Offshore
21 Limited NZBN 9429030115989 and Todd Minerals Limited
22 NZBN 9429030762596, as varied from time to time, in
23 relation to the use or proposed use of land pursuant to that
24 agreement after and in accordance with approved proposals
25 under that agreement and in relation to the use of that land
26 before any such approval of proposals where the Company
27 has the requisite authority to enter upon and so use the land";

28 (b) the insertion in sections 18(2), 18(4), 18(5) and 18(7) of the
29 words "or the Company as the case may be" after the words
30 "owner of any land";

31 (c) the insertion in section 18(3) of the words "or the Company
32 as the case may be" after the words "the owner";

1 (d) the insertion of the following sentences at the end of
2 section 18(3):

3 "In relation to a notice from the Company the conditions that
4 the Minister may specify can as appropriate include, among
5 other conditions, a condition restricting the Company's use of
6 the relevant land to after the approval or deemed approval as
7 the case may be under the abovementioned agreement of all
8 of the Company's submitted initial proposals thereunder for
9 the Project (as defined in the abovementioned agreement), or
10 in the case of additional proposals submitted or to be
11 submitted by the Company to after the approval or deemed
12 approval under that agreement of such additional proposals,
13 and to the extent so approved. "; and

14 (e) the insertion in sections 18(2) and 18(5) of the words "or it as
15 the case may be" after the word "he".

16 The Company acknowledges that nothing in this clause 6 nor the
17 granting of any consents under section 18 of the *Aboriginal Heritage*
18 *Act 1972* (WA) will constitute or is to be construed as constituting the
19 approval of any proposals submitted or to be submitted by the
20 Company under this Agreement or as the grant or promise of land
21 tenure for the purposes of this Agreement.

22 **7. Railway Corridor**

23 (1) As soon as practicable during its studies under clause 5, and from
24 time to time during those studies as required by either the Company
25 or the State, the Company shall consult with the Minister to seek the
26 agreement of the Minister as to:

27 (a) where the SRL Railway will begin and end;

28 (b) a route for the SRL Railway and access roads to be within the
29 Railway Corridor and the land required for that route, as well
30 as for Additional Infrastructure (if any), temporary
31 accommodation facilities for the railway workforce, water
32 bores and areas from which stone, sand, clay and gravel may
33 be taken; and

34 (c) the routes of, and the land required for, roads outside the
35 Railway Corridor for access to it to construct the SRL

1 Railway (such roads as agreed being "**Lateral Access**
2 **Roads**").

3 In seeking such agreement, regard shall be had to achieving a balance
4 between engineering matters including costs, the nature and use of
5 any lands concerned and interests therein and the costs of acquiring
6 the land (all of which shall be borne by the Company). The parties
7 acknowledge the intention is for the Company to construct the SRL
8 Railway, and the access roads for the construction and maintenance of
9 the SRL Railway which are to be within the Railway Corridor, along
10 the centreline of the Railway Corridor, subject to changes in that
11 alignment to the extent necessary to avoid heritage, environmental or
12 poor ground conditions that are not identified during preliminary
13 investigation work, and recognise the width of the Railway Corridor
14 must be no more than 500 metres unless otherwise agreed by the
15 Minister having regard to the need for the Railway Corridor to
16 vary along its route to accommodate associated infrastructure,
17 including access roads, temporary accommodation facilities for the
18 railway workforce, water bores and areas from which stone, sand,
19 clay and gravel may be taken. The provisions of clause 33 shall not
20 apply to this subclause.

21 (2) If the date by which the Company must submit detailed proposals
22 under clause 11(1) is extended or varied by the Minister pursuant to
23 clause 28, any agreement made pursuant to subclause (1) before such
24 date is extended or varied shall, unless the Minister notifies the
25 Company otherwise, be deemed to be at an end and neither party shall
26 have any claim against the other in respect of it.

27 (3) The Company acknowledges that it shall be responsible for liaising
28 with every title holder in respect of the land affected and for obtaining
29 in a form and substance acceptable to the Minister all unconditional
30 and irrevocable consents of each such title holder to, and all statutory
31 consents required in respect of the land affected for:

32 (a) the grant of the Special Railway Licence for the construction,
33 operation and maintenance within the Railway Corridor of
34 the SRL Railway and access roads to be within the Railway
35 Corridor;

36 (b) the grant of Lateral Access Road Licences for the
37 construction, use and maintenance of Lateral Access Roads

1 over the routes for the Lateral Access Roads agreed pursuant
2 to clause 7(1) (including as applying pursuant to
3 clause 13(2)); and
4 (c) the inclusion of additional land in the Special Railway
5 Licence as referred to in clause 14(8),
6 in accordance with this Agreement. For the purposes of this
7 subclause (3), "title holder" means a management body (as defined in
8 the LAA) in respect of any part of the affected land, a person who
9 holds a mining, petroleum or geothermal energy right (as defined in
10 the LAA) in respect of any part of the affected land, a person who
11 holds a lease, licence or easement under the LAA in respect of any
12 part of the affected land, a person who holds any other title granted
13 under or pursuant to a Government agreement in respect of any part
14 of the affected land, a person who holds a lease, licence or easement
15 in respect of any part of the affected land under any other Act applying
16 in the said State and a person in whom any part of the affected land is
17 vested, immediately before the provision of such consents to the
18 Minister as referred to in clause 11(5)(b) (including as applying
19 pursuant to clause 13(2)).

20 **8. Port Railway and Port Facilities**

21 (1) As soon as practicable during its studies under clause 5, and from
22 time to time during those studies as required by either the Company
23 or the State, the Company shall consult with the Minister to seek the
24 agreement of the Minister (acting with the concurrence of the Port
25 Authorities Minister) as to:

26 (a) the area or areas (as the case may be) of the Port within which
27 the Port Railway and the access roads to be used by the
28 Company in constructing, operating and maintaining the Port
29 Railway are to be constructed; and

30 (b) the nature and characteristics of the Port Railway, including a
31 design capacity which enables the transport of not less than
32 50 million tonnes of iron ore products per annum over the
33 Port Railway.

34 In considering the matters in paragraphs (a) and (b) above, the
35 Minister (and the Port Authorities Minister) may have regard to the
36 proposed nature and characteristics of the proposed Port Facilities and

- 1 the Minister (acting with the concurrence of the Port Authorities
2 Minister) may make his agreement as to one or more of those matters
3 conditional upon the Port Facilities having a specified nature and
4 specified characteristics, including a specified transshipment design
5 capacity of not less than 50 million tonnes per annum.
- 6 (2) If the date by which the Company must submit detailed proposals
7 under clause 11(1) is extended or varied by the Minister pursuant to
8 clause 28, any agreement made pursuant to subclause (1) before such
9 date is extended or varied shall, unless the Minister notifies the
10 Company otherwise, be deemed to be at an end and neither party shall
11 have any claim against the other in respect of it.
- 12 (3) Notwithstanding any agreement (including for the avoidance of doubt
13 pursuant to clauses 7(1) or 8(1)), representation or understanding
14 between the Company or a Guarantor and any one or more of the
15 State, the Minister, the Port Authorities Minister or the Port Authority
16 in connection with the establishment of the Port as a port under the
17 Port Authorities Act, none of the State, the Minister, the Port
18 Authorities Minister or the Port Authority:
- 19 (a) has any obligation, whether under this Agreement or
20 otherwise, to cause or ensure the establishment of the Port as
21 a port under the Port Authorities Act is pursued, completed or
22 completed without delay; or
- 23 (b) is liable to any person (including the Company, a Guarantor
24 or the PIOP mining area proponent) for any loss or damage of
25 any kind whatsoever and howsoever arising out of or in
26 connection with the failure of the Port to be so established.
- 27 (4) Nothing in this Agreement, including any agreement between the
28 Company and the Minister pursuant to subclause (1), shall be
29 construed to oblige the State or any Minister in the Government of the
30 said State to cause the grant to the Company or any other person
31 (whether for the initial Project or as expanded from time to time) of
32 tenure or other rights including the Port Railway Lease.
- 33 (5) The provisions of clause 33 shall not apply to this clause.

- 1 **9. Community development plan**
- 2 (1) In this clause, the term "community and social benefits" includes:
- 3 (a) assistance with skills development and training opportunities
4 to promote work readiness and employment for persons
5 living in the Pilbara region of the said State;
- 6 (b) training and guaranteed employment for indigenous and
7 non-indigenous persons living in the Pilbara region of the
8 said State;
- 9 (c) regional development activities in the Pilbara region of the
10 said State, including partnerships and sponsorships and local
11 procurement of goods and services;
- 12 (d) contribution to any community projects, town services or
13 facilities; and
- 14 (e) a regionally based workforce.
- 15 (2) The Company acknowledges the need for community and social
16 benefits flowing from this Agreement.
- 17 (3) The Company agrees that, prior to the time at which it submits any
18 proposals pursuant to clause 11, and, if required by the Minister, prior
19 to the time at which it submits any additional proposals pursuant to
20 clause 13, it shall:
- 21 (a) prepare a plan which describes the Company's proposed
22 strategies for achieving community and social benefits in
23 connection with the developments proposed; and
- 24 (b) submit to the Minister the plan prepared pursuant to
25 subclause (3)(a) and confer with the Minister in respect of the
26 plan.
- 27 (4) The Minister shall within one month after receipt of a plan submitted
28 under subclause (3)(b), either notify the Company that the Minister
29 approves the plan as submitted or notify the Company of changes
30 which the Minister requires be made to the plan. If the Company is
31 unwilling to accept the changes which the Minister requires it shall
32 notify the Minister to that effect and either party may refer to
33 arbitration hereunder the question of the reasonableness of the
34 changes required by the Minister.

- 1 (5) The effect of an award made on an arbitration pursuant to
2 subclause (4) shall be that the plan submitted by the Company
3 pursuant to subclause (3)(b) shall, with such changes required by the
4 Minister under subclause (4) as the arbitrator determines to be
5 reasonable (with or without modification by the arbitrator), be deemed
6 to be the plan approved by the Minister under this clause.
- 7 (6) During the currency of this Agreement, the Company shall implement
8 the plan approved or deemed to be approved by the Minister under
9 this clause.
- 10 (7) The Company shall at least annually report to the Minister about the
11 Company's implementation of the plan approved or deemed to be
12 approved by the Minister under this clause.
- 13 (8) At the request of either of them made at any time and from time to
14 time, the Minister and the Company shall confer as to any
15 amendments desired to any plan approved or deemed to be approved
16 by the Minister under this clause and may agree to amendment of the
17 plan or adoption of a new plan. Any such amended plan or new plan
18 will be deemed to be the plan approved by the Minister under this
19 clause.
- 20 **10. Local industry participation plan**
- 21 (1) In this clause, the term "local industry participation benefits" means:
- 22 (a) the use and training of labour available within the said State;
- 23 (b) the use of the services of engineers, surveyors, architects and
24 other professional consultants, experts, specialists, project
25 managers and contractors available within the said State; and
- 26 (c) the procurement of works, materials, plant, equipment and
27 supplies from Western Australian suppliers, manufacturers
28 and contractors.
- 29 (2) The Company acknowledges the need for local industry participation
30 benefits flowing from this Agreement.

- 1 (3) The Company agrees that within 3 months after the Operative Date it
2 shall prepare and provide to the Minister a plan which contains in
3 connection with the development proposed or to be proposed as the
4 case may be pursuant to clause 11:
- 5 (a) a clear statement on the strategies which the Company will
6 use, and require a third party as referred to in clause 19(2) to
7 use, to maximise the uses and procurement referred to in
8 subclause (1);
- 9 (b) detailed information on the procurement practices the
10 Company will adopt, and require a third party as referred to
11 in clause 19(2) to adopt, in calling for tenders and letting
12 contracts for works, materials, plant, equipment and supplies
13 and how such practices will provide fair and reasonable
14 opportunity for suitably qualified Western Australian
15 suppliers, manufacturers and contractors to tender or quote
16 for works, materials, plant, equipment and supplies;
- 17 (c) detailed information on the methods the Company will use,
18 and require a third party as referred to in clause 19(2) to use,
19 to have their respective procurement officers promptly
20 introduced to Western Australian suppliers, manufacturers
21 and contractors seeking such introduction; and
- 22 (d) details of the communication strategies the Company will
23 use, and require a third party as referred to in clause 19(2) to
24 use, to alert Western Australian engineers, surveyors,
25 architects and other professional consultants, experts,
26 specialists, project managers and consultants and Western
27 Australian suppliers, manufacturers and contractors to
28 services opportunities and procurement opportunities
29 respectively as referred to in subclause (1).
- 30 It is acknowledged by the Company that the strategies of the
31 Company referred to in subclause (3)(a) will include strategies of the
32 Company in relation to supply of services, labour, works, materials,
33 plant, equipment or supplies for the purposes of this Agreement.
- 34 (4) During the currency of this Agreement the Company shall implement
35 the plan provided under this clause.

1 (5) At the request of either of them made at any time and from time to
2 time, the Minister and the Company shall confer as to any
3 amendments desired to any plan provided under this clause and may
4 agree to the amendment of the plan or the provision of a new plan in
5 substitution for the one previously provided.

6 (6) The provisions of subclauses (3) and (4) shall apply mutatis mutandis
7 to any development proposed or to be proposed as the case may be
8 pursuant to clause 13 (unless the Minister otherwise requires) but with
9 any required plan to be submitted by no later than the giving of notice
10 by the Company under clause 13(1).

11 **11. Company to submit proposals**

12 (1) The Company shall, subject to the EP Act, the provisions of this
13 Agreement, agreement at that time subsisting in respect of the matters
14 required to be agreed pursuant to clauses 7(1) and 8(1), approval of a
15 plan as referred to in clause 9, provision of a plan as referred to in
16 clause 10 and, unless otherwise agreed with the State during the
17 currency of this Agreement, the establishment of the Port under the
18 Port Authorities Act, submit to the Minister by 31 March 2019 to the
19 fullest extent reasonably practicable its detailed proposals (including
20 plans where practicable and specifications where reasonably required
21 by the Minister and any other details normally required by a local
22 government in whose area any works are to be situated) with respect
23 to the undertaking of the Project, which proposals shall include the
24 location, area, layout, design, materials and time program for the
25 commencement and completion of construction or the provision (as
26 the case may be) of each of the following matters:

27 (a) the SRL Railway including fencing (if any) and crossing
28 places within the Railway Corridor and the matters referred
29 to in subclause (2)(a);

30 (b) Additional Infrastructure (if any) to be constructed within the
31 Railway Corridor;

32 (c) temporary accommodation and ancillary temporary facilities
33 for the railway construction workforce on, or in the vicinity
34 of, the Railway Corridor;

35 (d) water supply;

- 1 (e) energy supplies;
- 2 (f) telecommunications;
- 3 (g) access roads within the Railway Corridor and Lateral Access
4 Roads both along the routes for those roads agreed between
5 the Minister and the Company pursuant to clause 7(1);
- 6 (h) use of local labour, professional services, manufacturers,
7 suppliers, contractors and materials and measures to be taken
8 with respect to the engagement and training of employees by
9 the Company, its agents and contractors; and
- 10 (i) any other works, services or facilities desired by the
11 Company.
- 12 (2) (a) Proposals as to the matters specified in subclause (1)(a) must
13 provide for the SRL Railway to have:
- 14 (i) a design capacity which enables the transport of not
15 less than 50 million tonnes of iron ore products per
16 annum over the SRL Railway; and
- 17 (ii) a railway track configuration which enables:
- 18 (A) rail operations of the kind carried out on the
19 Pilbara Iron Ore Railways to be carried out
20 on the Railway, and vice versa; and
- 21 (B) connection of the SRL Railway outside the
22 Port to any one or more of the Pilbara Iron
23 Ore Railways.
- 24 (b) Proposals pursuant to subclause (1) must specify the matters
25 agreed for the purpose pursuant to clauses 7(1) and must not
26 be contrary to or inconsistent with such agreed matters.
- 27 (3) Each of the proposals pursuant to subclause (1) may with the approval
28 of the Minister, or must if so required by the Minister, be submitted
29 separately and in any order as to the matter or matters mentioned in
30 one or more of paragraphs (a) to (i) of subclause (1), and until all of
31 its proposals under this clause have been approved, the Company may
32 withdraw and may resubmit any proposal but the withdrawal of any
33 proposal shall not affect the obligations of the Company to submit a

- 1 proposal under this clause in respect of the subject matter of the
2 withdrawn proposal.
- 3 (4) The Company shall, whenever any of the following matters referred
4 to in this subclause are proposed by the Company (whether before or
5 during the submission of proposals under this clause), submit to the
6 Minister details of any services (including any elements of the project
7 investigations, design and management) and any works, materials,
8 plant, equipment and supplies that it proposes to consider obtaining
9 from or having carried out or permitting to be obtained from or
10 carried out outside Australia, together with its reasons therefor and
11 shall, if required by the Minister consult with the Minister with
12 respect thereto.
- 13 (5) At the time when the Company submits the last of the said proposals
14 pursuant to this clause, it shall:
- 15 (a) furnish to the Minister's reasonable satisfaction evidence of:
- 16 (i) the financial capability of the Company to undertake
17 the operations to which the said proposals refer;
- 18 (ii) all accreditations under the Rail Safety Act which are
19 required to be held by the Company or any other
20 person for the construction of the SRL Railway;
- 21 (iii) the Company having a binding agreement or
22 agreements with the PIOP mining area proponent or
23 proponents (as the case may be) for the transport by
24 the Company upon the Railway to the Port, for not
25 less than 20 years from the Railway Operation Date,
26 of not less than 25 million tonnes in aggregate per
27 annum, commencing from the Railway Operation
28 Date, of iron ore produced, or products derived from
29 iron ore produced by such proponent or proponents,
30 after the date of this Agreement from a project or
31 projects (as the case may be) within the PIOP mining
32 area, which agreement may be conditional upon the
33 grant of the Port Railway Lease and the Special
34 Railway Licence;
- 35 (iv) the PIOP mining area proponent(s) being ready to
36 embark upon and to proceed to carry out its or their

- 1 abovementioned project or projects (as the case may
2 be) in a timeframe consistent with the
3 commencement of the undertaking of the Project,
4 including:
- 5 (A) evidence of there being in place a binding
6 agreement or agreements which assures to
7 such proponent or proponents access as and
8 when required to capacity within the Port
9 for the handling at and shipment from the
10 Port of iron ore products that may be
11 transported upon the Railway under the
12 agreement referred to in paragraph (a)(iii)
13 above, which agreement or agreements may
14 be conditional upon the grant of the Port
15 Railway Lease and the Special Railway
16 Licence;
 - 17 (B) evidence that both Miscellaneous Licence
18 L47/733 and Miscellaneous Licence
19 L47/753 have been granted and remain in
20 force and of any consents required to pass
21 over any Pilbara Iron Ore Railway in order
22 to transport iron ore to the PIOP mining
23 area loading point, which consents may be
24 conditional upon the grant of the Special
25 Railway Licence; and
 - 26 (C) if the PIOP mining area proponent(s) is not
27 the owner of the proposed conveyor to the
28 PIOP loading point, having in place a
29 binding agreement for the transport of iron
30 ore products to the PIOP mining area
31 loading point, which agreement may be
32 conditional upon the grant of the Special
33 Railway Licence;
 - 34 (v) the capacity within the Port as referred to in
35 paragraph (a)(iv)(A) above being available over the
36 term of this Agreement and in a timeframe consistent
37 with the commencement and undertaking of the
38 Project;

- 1 (vi) all other arrangements and agreements the Company
2 has at that time made or proposes to make in respect
3 of access (as defined in clause 16) to the Railway or
4 in respect of transport of any iron ore products over
5 the Railway;
- 6 (vii) the readiness of the Company to embark upon and
7 proceed to carry out the operations referred to in the
8 said proposals; and
- 9 (viii) the Company holding, or the readiness of relevant
10 authorities and agencies to grant, upon the Minister's
11 approval of the Company's proposals, all approvals,
12 consents, licences or other rights required to
13 implement the proposals;
- 14 (b) furnish to the Minister the written consents referred to in
15 clause 7(3)(a) and 7(3)(b); and
- 16 (c) furnish to the Minister's reasonable satisfaction evidence that
17 the Company and the Port Authority have entered into a
18 binding agreement for the grant to the Company of the Port
19 Railway Lease, which agreement may be conditional upon
20 the grant of the Special Railway Licence and which shall
21 provide that the term of the Port Railway Lease will
22 commence within 3 months after construction of the Port
23 Railway.

24 **12. Consideration of proposals**

- 25 (1) In respect of each proposal pursuant to clause 11(1) the Minister shall,
26 subject to the EP Act:
- 27 (a) approve of the proposal without qualification or reservation;
28 or
- 29 (b) defer consideration of or decision upon the same until such
30 time as the Company submits a further proposal or proposals
31 in respect of some other of the matters mentioned in
32 clause 11(1) not covered by the said proposal or until such
33 time as clause 11(5) has been complied with by the
34 Company; or

1 (c) require as a condition precedent to the giving of his approval
2 to the said proposal, that the Company make such alteration
3 thereto or comply with such conditions in respect thereto as
4 he (having regard to the circumstances, including the overall
5 development of and the use by others as well as the Company
6 of all or any of the facilities proposed to be provided) thinks
7 reasonable and in such a case the Minister shall disclose his
8 reasons for such conditions,

9 PROVIDED ALWAYS that:

10 (d) where implementation of any proposals hereunder have been
11 approved pursuant to the EP Act subject to conditions or
12 procedures, any approval or decision of the Minister under
13 this clause shall if the case so requires incorporate a
14 requirement that the Company make such alterations to the
15 proposals as may be necessary to make them accord with
16 those conditions or procedures; and

17 (e) the Minister shall not consider a purported proposal or
18 proposals (as the case may be) if the Minister is of the
19 opinion that the purported proposal or proposals does not or
20 do not (as the case may be) comply with clause 11 or this
21 Agreement generally and in such circumstances:

22 (i) this subclause (1) (other than this paragraph (e)) and
23 subclause (2) shall not apply to the purported
24 proposal or proposals;

25 (ii) subject to this Agreement, the Minister shall afford
26 the Company full opportunity to consult with him and
27 should it so desire to submit a new or revised
28 proposal or proposals either generally or in respect to
29 some particular matter; and

30 (iii) the Minister's opinion is not subject to arbitration
31 under clause 33.

32 (2) Subject to subclause (1), the Minister shall within 2 months after the
33 later of:

34 (a) receipt of proposals pursuant to clause 11(1);

- 1 (b) where the proposals are to be assessed under Part IV of the
2 EP Act, service on the Minister of an authority under
3 section 45(7) of the EP Act; and
- 4 (c) where a proposal will or may require the State to do any act
5 which affects any native title rights and interests, completion
6 of all processes required by laws relating to native title to be
7 undertaken by the State before that act may be done by the
8 State,
- 9 give notice to the Company of his decision in respect to the proposals.
- 10 (3) If the decision of the Minister is as mentioned in either of
11 paragraphs (b) or (c) of subclause (1) the Minister shall afford the
12 Company full opportunity to consult with him and should it so desire
13 to submit new or revised proposals either generally or in respect to
14 some particular matter.
- 15 (4) If the decision of the Minister is as mentioned in either of
16 paragraphs (b) or (c) of subclause (1) and the Company considers that
17 the decision is unreasonable, the Company within 2 months after
18 receipt of the notice mentioned in subclause (2) may elect to refer to
19 arbitration in the manner hereinafter provided the question of the
20 reasonableness of the decision PROVIDED THAT any requirement
21 of the Minister pursuant to the proviso to subclause (1) shall not be
22 referable to arbitration hereunder.
- 23 (5) An award made on an arbitration pursuant to subclause (4) shall have
24 force and effect as follows:
- 25 (a) if by the award the dispute is decided against the Company
26 then unless the Company within 3 months after delivery of
27 the award gives notice to the Minister of its acceptance of the
28 award, this Agreement shall on the expiration of that period
29 of 3 months cease and determine; or
- 30 (b) if by the award the dispute is decided in favour of the
31 Company the decision shall take effect as a notice by the
32 Minister that he is so satisfied with and approves the matter
33 or matters the subject of the arbitration.
- 34 (6) Notwithstanding any provision of this Agreement (other than
35 clause 28) or that any matter required to be agreed pursuant to

- 1 clauses 7(1) and 8(1) has not been agreed, or that the plan required to
2 be approved pursuant to clause 9 has not been approved, or that the
3 plan required to be provided pursuant to clause 10 has not been
4 provided, or that the Port has not been established under the Port
5 Authorities Act, or that under this clause any proposals of the
6 Company are approved by the Minister or determined by arbitration
7 award, unless each and every proposal and matter required pursuant to
8 clause 11 is so approved or determined by 1 October 2019, then
9 without limiting the provisions of clause 30:
- 10 (a) subject to paragraph (b), the Minister may give the Company
11 12 months' notice of intention to determine this Agreement
12 and unless before the expiration of the said 12 month notice
13 period all the detailed proposals and matters are so approved
14 or determined, this Agreement shall on the expiration of that
15 period cease and determine; or
- 16 (b) if the State has determined or determines that the Port (or part
17 thereof) will not be established or completed for any reason
18 whatsoever and the Company's right to submit proposals
19 pursuant to clause 11 is still subject to such establishment
20 having first occurred, the Minister may give the Company
21 notice of intention to determine this Agreement immediately
22 and this Agreement shall cease and determine on the date the
23 notice is given to the Company.
- 24 (7) Subject to and in accordance with the EP Act and any approvals and
25 licences required under that Act the Company shall implement the
26 approved proposals in accordance with the terms thereof.
- 27 (8) Notwithstanding clause 26, the Minister may during the
28 implementation of approved proposals approve variations to those
29 proposals.
- 30 (9) The Minister may extend the periods set forth in clause 11(1) and
31 subclause (6) of this clause (in addition to any extension granted
32 under clauses 27 and 28) upon request of the Company for such
33 reasonable period or periods as the Minister considers appropriate to
34 enable the Company to comply with laws relating to native title.

1 **13. Expansion of Project outside the Port**

2 (1) If the Company at any time during the currency of this Agreement
3 desires to construct outside the Port a SRL Railway spur line,
4 Additional Infrastructure or otherwise desires to significantly modify,
5 expand or otherwise vary its activities that are the subject of this
6 Agreement and that may be carried on by it pursuant to this
7 Agreement beyond those activities specified in any approved
8 proposals, it shall give notice of such desire to the Minister and
9 furnish to the Minister with that notice:

10 (a) an outline of its proposals in respect thereto (including such
11 matters mentioned in clause 11(1) as are relevant or as the
12 Minister otherwise requires);

13 (b) in the case of the proposed construction of a SRL Railway
14 spur line, the proposed design capacity of such spur line;

15 (c) the expected consequent increase in the capacity of the
16 Railway or part of it (as the case may be), as a result of the
17 construction of the spur line or other modification, expansion
18 or variation of the Company's activities (as the case may be);
19 and

20 (d) to the Minister's reasonable satisfaction evidence that
21 capacity within the Port, and access for the Company to such
22 capacity, will be available over the remaining term of this
23 Agreement, and in a timeframe consistent with the
24 commencement and completion of the construction of the
25 spur line or other modification, expansion or variation of the
26 Company's activities (as the case may be), for the handling at
27 and shipment from it of the additional tonnages of iron ore
28 products that may be transported upon the Railway to the Port
29 as a result of the expected consequent increase in the capacity
30 of the Railway or part of it (as the case may be).

31 (2) The Minister shall within one month of receipt of such notice advise
32 the Company whether or not he approves in-principle the proposed
33 construction of such spur line, Additional Infrastructure (if any) or
34 other modification, expansion or variation of the Company's activities
35 (as the case may be) or whether he requires the proposal to be
36 modified (in which case, subclause (1) shall mutatis mutandis apply to
37 such modified proposal). If the Minister gives in-principle approval

- 1 the Company may (but not otherwise) submit detailed proposals in
2 respect thereof provided that the provisions of clauses 4, 5, 7 (in
3 respect of any proposed spur line), 9 and 10 shall mutatis mutandis
4 apply prior to submission of detailed proposals in respect thereof.
- 5 (3) Subject to the EP Act, the provisions of this Agreement and
6 agreement at that time subsisting in respect of any matters required to
7 be agreed pursuant to clause 7(1) (as referred to in subclause (2)),
8 approval of a plan as referred to in clause 9 and provision of a plan as
9 referred to in clause 10 (in each case if the Minister so requires), the
10 Company shall submit to the Minister within a reasonable timeframe,
11 as determined by the Minister after receipt of the notice referred to in
12 subclause (1) (or in the case of a notice referred to in subclause (2),
13 the giving of the Minister's in-principle approval as referred to in that
14 subclause), detailed proposals in respect of the proposed construction
15 of such spur line, Additional Infrastructure (if any) or the other
16 proposed modification, expansion or variation of its activities (as the
17 case may be) including such of the matters mentioned in clause 11(1)
18 as the Minister may require.
- 19 (4) The provisions of clause 11 (other than subclause (2)(a)(i), 5(a)(iii),
20 5(a)(iv), 5(a)(v) and 5(c)) and with the reference in subclause (5)(b) to
21 clause 7(3)(a) being read as a reference to clause 7(3)(c)) and
22 clause 12 (other than subclauses (5)(a), (6), (7) and (9) of clause 12)
23 shall mutatis mutandis apply to detailed proposals submitted pursuant
24 to this clause provided that the Company may withdraw such
25 proposals at any time before approval thereof or, where any decision
26 of the Minister in respect thereof is referred to arbitration, within
27 3 months after the award by notice to the Minister that it shall not be
28 proceeding with the same. Subject to and in accordance with the EP
29 Act and any approvals or licences required under that Act, the
30 Company shall implement approved proposals pursuant to this clause
31 in accordance with the terms thereof.

32 **14. Grant of Tenure**

- 33 (1) On application made by the Company to the Minister in such manner
34 as the Minister may determine, not later than 3 months after all its
35 proposals submitted pursuant to clause 11(1) have been approved or
36 deemed to be approved and the Company has complied with the
37 provisions of clause 11(5), the State, notwithstanding the Mining Act,
38 shall cause to be granted to the Company:

- 1 (a) a miscellaneous licence to conduct within the Railway
2 Corridor and in accordance with its approved proposals all
3 activities (including the taking of stone, sand, clay and gravel,
4 the provision of temporary accommodation facilities for the
5 railway workforce and, subject to the *Rights in Water and*
6 *Irrigation Act 1914* (WA), the operation of water bores)
7 necessary for the planning, design, construction,
8 commissioning, operation and maintenance within the
9 Railway Corridor of the SRL Railway, Additional
10 Infrastructure (if any) and access roads ("**the Special**
11 **Railway Licence**"), such licence to be granted under and
12 subject to, except as otherwise provided in this Agreement,
13 the Mining Act in the form of Schedule 2 hereto and subject
14 to such terms and conditions as the Minister for Mines may
15 from time to time consider reasonable and at a rental
16 calculated in accordance with the Mining Act:
- 17 (i) prior to the Railway Operation Date, as if the width
18 of the Railway Corridor were 100 metres; and
- 19 (ii) on and from the Railway Operation Date, at the
20 rentals from time to time prescribed under the Mining
21 Act; and
- 22 (b) a miscellaneous licence or licences to allow the construction,
23 use and maintenance of Lateral Access Roads within the
24 routes agreed for those Lateral Access Roads under
25 clause 7(1) (each a "**Lateral Access Road Licence**"), each
26 such licence to be granted under and subject to, except as
27 otherwise provided in this Agreement, the Mining Act in the
28 form of Schedule 3 hereto and subject to such terms and
29 conditions as the Minister for Mines may from time to time
30 consider reasonable and at the rentals from time to time
31 prescribed under the Mining Act.
- 32 (2) On application made by the Company to the Minister in such manner
33 as the Minister may determine, not later than 3 months after its
34 proposals submitted pursuant to clause 13(2) for the construction of
35 Lateral Access Roads for access to the Railway Corridor to construct
36 a SRL Railway spur line have been approved or deemed to be
37 approved and the Company has complied with the provisions of
38 clause 11(5)(b) (as applying pursuant to clause 13(4)), the State

1 notwithstanding the Mining Act shall cause to be granted to the
2 Company a miscellaneous licence or licences to allow the
3 construction, use and maintenance of Lateral Access Roads within the
4 routes agreed for those Lateral Access Roads under clause 7(1) (as
5 applying pursuant to clause 13(2) (each a "**Lateral Access Road**
6 **Licence**"), each such licence to be granted under and subject to,
7 except as otherwise provided in this Agreement, the Mining Act in the
8 form of Schedule 4 hereto and subject to such terms and conditions as
9 the Minister for Mines may from time to time consider reasonable and
10 at the rentals from time to time prescribed under the Mining Act.

11 (3) Subject to the performance by the Company of its obligations under
12 this Agreement and the Mining Act and notwithstanding any
13 provisions of the Mining Act to the contrary, the term of the Special
14 Railway Licence shall be for a period of 20 years commencing on the
15 date of grant thereof (subject to sooner determination thereof upon the
16 determination of this Agreement) with the right as provided herein for
17 the Company to take during the currency of this Agreement 2
18 successive renewals each of 10 years (subject to sooner determination
19 thereof upon the determination of this Agreement) upon the same
20 terms and conditions PROVIDED THAT the Minister is satisfied that
21 the SRL Railway is, at the date of the relevant renewal, operational
22 and being used to transport iron ore products to the Port. The
23 Company may exercise its right to renew the term of the Special
24 Railway Licence as provided herein by making application for such
25 renewal not later than 6 months before the expiration of the then
26 current term of the Special Railway Licence.

27 (4) Notwithstanding the Mining Act, the term of any Lateral Access Road
28 Licence shall, subject to the sooner determination thereof on the
29 cessation or sooner determination of this Agreement, be for a period
30 of 5 years commencing on the date of grant thereof.

31 (5) Notwithstanding the Mining Act, and except as required to do so by
32 the terms of the Special Railway Licence, the Company shall not be
33 entitled to surrender the Special Railway Licence or any Lateral
34 Access Road Licence or any part or parts of them without the prior
35 consent of the Minister.

36 (6) (a) The Company may in accordance with approved proposals
37 take stone, sand, clay and gravel from the Railway Corridor
38 (including any area of land included in the Special Railway

- 1 Licence pursuant to subclause (8)) for the construction,
2 operation and maintenance of the SRL Railway (including
3 any SRL Railway spur line constructed within or approved
4 for construction within the Railway Corridor).
- 5 (b) Notwithstanding the Mining Act, no royalty shall be payable
6 under the Mining Act in respect of stone, sand, clay and
7 gravel which the Company is permitted by subclause (6)(a) to
8 obtain from the land the subject of the Special Railway
9 Licence.
- 10 (7) For the purposes of this Agreement and without limiting the operation
11 of the other subclauses of this clause, the application of the Mining
12 Act and the regulations made thereunder are specifically modified;
- 13 (a) in section 91(1) by:
- 14 (i) deleting "the mining registrar or the warden, in
15 accordance with section 42 (as read with section 92)"
16 and substituting "the Minister";
- 17 (ii) deleting "any person" and substituting "the Company
18 (as defined in the agreement made on or about
19 23 January 2017 between The Honourable Colin
20 James Barnett, Premier of the State of Western
21 Australia acting for and on behalf of the said State
22 and its instrumentalities from time to time, BBI Rail
23 Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum
24 Mining Company Limited NZBN 9429040945767,
25 Todd Offshore Limited NZBN 9429030115989 and
26 Todd Minerals Limited NZBN 9429030762596, as
27 varied from time to time)"; and
- 28 (iii) deleting "for any one or more of the purposes
29 prescribed" and substituting "for the purpose
30 specified in clause 14(1)(a), clause 14(1)(b) or
31 clause 14(2), of the agreement made on or about
32 23 January 2017 between The Honourable Colin
33 James Barnett, Premier of the State of Western
34 Australia acting for and on behalf of the said State
35 and its instrumentalities from time to time, BBI Rail
36 Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum
37 Mining Company Limited NZBN 9429040945767,

- 1 Todd Offshore Limited NZBN 9429030115989 and
2 Todd Minerals Limited NZBN 9429030762596, as
3 varied from time to time";
- 4 (b) in section 91(3)(a), by deleting "prescribed form" and
5 substituting "form required by the agreement made on or
6 about 23 January 2017 between The Honourable Colin James
7 Barnett, Premier of the State of Western Australia acting for
8 and on behalf of the said State and its instrumentalities from
9 time to time, BBI Rail Aus Pty Ltd ABN 44 604 857 392,
10 Todd Petroleum Mining Company Limited NZBN
11 9429040945767, Todd Offshore Limited NZBN
12 9429030115989 and Todd Minerals Limited NZBN
13 9429030762596, as varied from time to time";
- 14 (c) by deleting sections 91(6), 91(9), 91(10) and 91B;
- 15 (d) in section 92 by:
- 16 (i) deleting "Sections 41, 42, 44, 46, 46A, 47 and 52
17 apply," and inserting "Section 46A (excluding in
18 subsection (2)(a) "the mining registrar, the warden
19 or") applies,"; and
- 20 (ii) deleting "in those provisions" and inserting "in that
21 provision";
- 22 (e) by deleting the full stop at the end of the section 94(1) and
23 inserting, "except to the extent otherwise provided in, or to
24 the extent that such terms and conditions are inconsistent
25 with, the agreement made on or about 23 January 2017
26 between The Honourable Colin James Barnett, Premier of the
27 State of Western Australia acting for and on behalf of the said
28 State and its instrumentalities from time to time, BBI Rail
29 Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum Mining
30 Company Limited NZBN 9429040945767, Todd Offshore
31 Limited NZBN 9429030115989 and Todd Minerals Limited
32 NZBN 9429030762596, as varied from time to time.";
- 33 (f) by deleting sections 94(2), (3) and (4);
- 34 (g) in section 96(1), by inserting after "miscellaneous licence"
35 the words "(not being a miscellaneous licence granted

- 1 pursuant to the agreement made on or about 23 January 2017
2 between The Honourable Colin James Barnett, Premier of the
3 State of Western Australia acting for and on behalf of the said
4 State and its instrumentalities from time to time, BBI Rail
5 Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum Mining
6 Company Limited NZBN 9429040945767, Todd Offshore
7 Limited NZBN 9429030115989 and Todd Minerals Limited
8 NZBN 9429030762596, as varied from time to time");
- 9 (h) by deleting mining regulations 37(2), 37(3), 42 and 42A; and
- 10 (i) by inserting at the beginning of mining regulations 41(c) and
11 (f) the words "subject to the agreement made on or about
12 23 January 2017 between The Honourable Colin James
13 Barnett, Premier of the State of Western Australia acting for
14 and on behalf of the said State and its instrumentalities from
15 time to time, BBI Rail Aus Pty Ltd ABN 44 604 857 392,
16 Todd Petroleum Mining Company Limited NZBN
17 9429040945767, Todd Offshore Limited NZBN
18 9429030115989 and Todd Minerals Limited NZBN
19 9429030762596, as varied from time to time".
- 20 (8) If additional proposals are approved in accordance with clause 13 for
21 the construction of a SRL Railway spur line and Additional
22 Infrastructure (if any) outside the then Railway Corridor, the Minister
23 for Mines shall include the area of land within which such
24 construction is to occur in the Special Railway Licence by
25 endorsement. The area of such land may be included notwithstanding
26 that the survey of the land has not been completed but subject to
27 correction to accord with the survey when completed at the
28 Company's expense.

29 **15. Construction and operation of Railway**

- 30 (1) Subject to and in accordance with approved proposals, the Rail Safety
31 Act and the State having assured to the Company all necessary rights
32 over Crown land (as defined in the LAA) available for the purpose,
33 the Company shall in a proper and workmanlike manner and in
34 accordance with recognised standards for railways of a similar nature
35 operating under similar conditions, construct the SRL Railway,
36 Additional Infrastructure (if any) and associated access roads within
37 the Railway Corridor and shall also construct inter alia any necessary

1 sidings, crossing points, bridges, signalling switches and other works
2 and appurtenances and provide for crossings and (where appropriate
3 and required by the Minister) grade separation or other protective
4 devices, including flashing lights and boom gates, at places where the
5 SRL Railway crosses or intersects with major roads or existing
6 railways.

7 (2) The Company shall during the currency of this Agreement:

8 (a) keep the Railway and Additional Infrastructure (if any) in an
9 operable state;

10 (b) ensure that the Railway and Additional Infrastructure (if any)
11 is operated in a safe and proper manner in compliance with
12 all applicable laws from time to time; and

13 (c) without limiting subclause (2)(b) or clause 18, ensure that the
14 obligations imposed under the Rail Safety Act on a rail
15 transport operator (as that term is therein defined) are
16 complied with in connection with the Railway and (from such
17 time as the Access Act and the Access Code apply to the
18 Railway) ensure that the obligations imposed under the
19 Access Act and the Access Code on a railway owner (as that
20 term is therein defined) are complied with in connection with
21 the Railway.

22 Nothing in this Agreement shall be construed to exempt the Company
23 or any other person from compliance with the Rail Safety Act and
24 (from and during such time as they apply as referred to in
25 clause 16(2)) the Access Act and the Access Code, or limit their
26 application to the Company's operations generally.

27 (3) The Company shall provide crossings for livestock and also for any
28 roads, other railways, conveyors, pipelines, transmission lines and
29 other utilities which in respect of a proposed crossing of land the
30 subject of the Special Railway Licence exist at the date of grant of the
31 Special Railway Licence or in respect of land subsequently included
32 in it exist at the date of such inclusion or in respect of land the subject
33 of a Lateral Access Road Licence exist at the date of grant of the
34 Lateral Access Road Licence. In addition for the purposes of
35 livestock and infrastructure such as roads, railways, conveyors,
36 pipelines, transmission lines and other utilities proposed to cross the
37 land the subject of the Special Railway Licence or land the subject of

- 1 a Lateral Access Road Licence(as the case may be) the Company
2 shall:
- 3 (a) if applicable, give its consent to, and otherwise facilitate, the
4 grant by the State or any agency, instrumentality or other
5 authority of the State of any lease, licence or other title over
6 land the subject of the Special Railway Licence or of a
7 Lateral Access Road Licence (as the case may be) so long as
8 such grant does not in the Minister's opinion unduly prejudice
9 or interfere with the activities of the Company under this
10 Agreement; and
- 11 (b) on reasonable terms and conditions allow access for the
12 construction and operation of such crossings and associated
13 infrastructure,
- 14 provided that in forming his opinion under this clause, the Minister
15 must consult with the Company.
- 16 (4) In relation to its use of the Railway when transporting passengers or
17 carrying iron ore products, the Company shall not be deemed to be a
18 common carrier at law or otherwise.
- 19 (5) The Company shall at all times be the holder of the Special Railway
20 Licence, the Port Railway Lease and Lateral Access Road Licences
21 and (without limiting clause 32) shall, subject to any temporary
22 emergency and statutory rights of a relevant authority or agency
23 (including the Port Authority), at all times own manage and control
24 the use of the Railway and Additional Infrastructure (if any).
- 25 (6) The Company shall not be entitled to exclusive possession of the land
26 the subject of the Special Railway Licence or any Lateral Access
27 Road Licence to the intent that the State, the Minister, the Minister for
28 Mines and any persons authorised by any of them from time to time
29 shall be entitled to enter upon the land or any part of it at all
30 reasonable times and on reasonable notice with all necessary vehicles,
31 plant and equipment and for purposes related to this Agreement or
32 such other purposes as they think fit but in doing so shall be subject to
33 the reasonable directions of the Company so as not to unreasonably
34 interfere with the Company's operations.

- 1 (7) The Company's ownership of the SRL Railway and Additional
2 Infrastructure (if any) shall not give it an interest in the land
3 underlying it.
- 4 (8) The Company shall not at any time without the prior consent of the
5 Minister dismantle, sell or otherwise dispose of any part or parts of
6 the Railway or Additional Infrastructure (if any), or permit this to
7 occur, other than for the purpose of maintenance, repair, upgrade or
8 renewal.
- 9 (9) The Company shall use all reasonable endeavours to ensure that,
10 during the currency of this Agreement, the SRL Railway has a
11 railway track configuration which enables:
- 12 (a) rail operations of the kind carried out on the Pilbara Iron Ore
13 Railways to be carried out on the Railway, and vice versa;
14 and
- 15 (b) connection of the SRL Railway to any one or more of the
16 Pilbara Iron Ore Railways.
- 17 (10) The Company shall not be entitled to surrender the Port Railway
18 Lease or any part or parts of it without the prior consent of the
19 Minister (acting with the concurrence of the Port Authorities
20 Minister).
- 21 (11) The Company shall, subject to and in accordance with approved
22 proposals, in a proper and workmanlike manner, construct any access
23 roads, Lateral Access Roads and other works approved for
24 construction under this Agreement.
- 25 (12) The Company shall:
- 26 (a) be responsible for the cost of construction and maintenance of
27 all Private Roads;
- 28 (b) at its own cost erect signposts and take other steps that may
29 be reasonable in the circumstances to prevent any persons
30 and vehicles (other than those engaged upon the Company's
31 activities and its invitees and licensees and persons who have
32 rights under the Access Act and the Access Code to use those
33 roads) from using the Private Roads; and

1 (c) at any place where any Private Roads are constructed by the
2 Company so as to cross any railways or public roads provide
3 at its cost such reasonable protection and signposting as may
4 be required by the Commissioner of Main Roads or the
5 Public Transport Authority as the case may be.

6 (13) During the currency of this Agreement the Company shall not trade in
7 iron ore products or permit any third party referred to in clause 32 to
8 trade in iron ore products while so engaged by the Company.

9 **16. Access Obligations for Railway**

10 (1) For the purposes of this clause:

11 (a) "access" includes use by persons of the Railway and, in
12 connection with such use, use by persons of the Company's
13 access roads within the Railway Corridor and within the Port
14 Railway Area but does not, for the purposes of
15 subclause (10)(c) or (12) include use of the Company's
16 rolling stock, rolling stock maintenance facilities, office
17 buildings, housing, freight centres, terminal yards and depots
18 or other facilities which are not railway infrastructure (as that
19 term is defined in the Access Act) and, for the avoidance of
20 doubt, does not include use of unloading facilities;

21 (b) "Access Date" means the date on which all of the documents
22 and matters referred to in subclause (13)(c) are approved or
23 determined under the relevant section of the Access Act or of
24 the Access Code;

25 (c) "agreement" includes an agreement, commitment or
26 arrangement which is binding or takes effect when made and
27 an agreement, commitment or arrangement which becomes
28 binding or takes effect during the currency of this Agreement
29 with the giving of notice, lapse of time, occurrence of any
30 event, passing of any date or for any other reason;

31 (d) "Commission" has the same meaning as in Australian
32 Consumer Law;

33 (e) "Expansion Access Date" in relation to an expansion or
34 extension (including any spur line) of the Railway means the
35 date on which all of the documents and matters referred to in

- 1 subclause (13)(d) are approved or determined under the
2 relevant section of the Access Act or of the Access Code in
3 connection with the expansion or extension of the Railway;
- 4 (f) "railway owner" has the same meaning as in the Access Act;
- 5 (g) "Regulator" has the same meaning as in the Access Act; and
- 6 (h) "ACL Undertaking Acceptance Date" means if the Company
7 submits a written undertaking to the Commission under
8 Division 6 of Part IIIA of the Australian Consumer Law, the
9 date on which, under section 44ZZBA of the Australian
10 Consumer Law, the decision of the Commission to accept the
11 Company's proposed undertaking for the provision of haulage
12 services comes into operation; and
- 13 (i) "year" means the period of 12 months commencing on the
14 Railway Operation Date or any subsequent period of
15 12 months during the currency of this Agreement.
- 16 (2) The State and the Company acknowledge that, unless the Company
17 submits a written undertaking to the Commission under Division 6 of
18 Part IIIA of the Australian Consumer Law for the provision of
19 haulage services (including of iron ore) over the Railway and the
20 Commission accepts the proposed undertaking under Division 6 of
21 Part IIIA of the Australian Consumer Law, the Access Act and the
22 Access Code shall apply:
- 23 (a) to the Railway (as soon as possible after the Railway is
24 constructed and commissioned and in any event before the
25 Railway Operation Date); and
- 26 (b) to any expansion or extension thereof (including a spur line)
27 (as soon as possible after such expansion or extension is
28 constructed).
- 29 (3) The Company shall from the date occurring 6 months before the date
30 for completion of construction of the SRL Railway specified in its
31 time program for the commencement and completion of construction
32 of that SRL Railway submitted under clause 11(1), keep the Minister
33 fully informed as to:
- 34 (a) the progress of that construction and construction of the Port
35 Railway;

- 1 (b) the likely completion and commissioning of the initial
2 Railway; and
- 3 (c) the likely Railway Operation Date.
- 4 (4) The Company shall on the Railway Operation Date notify the
5 Minister that the first carriage of iron ore products over the initial
6 railway line between the PIOP mining area loading point and the area
7 on which the Port Facilities are or will be located (other than for
8 construction or commissioning purposes) has occurred.
- 9 (5) The Company shall from the date occurring 6 months before the date
10 for completion of construction of any SRL Railway spur line
11 specified in its time program for the commencement and completion
12 of construction of that spur line submitted under clause 13 keep the
13 Minister fully informed as to:
- 14 (a) the progress of that construction and its likely completion and
15 commissioning; and
- 16 (b) in respect of it, the likely SRL Railway spur line Operation
17 Date.
- 18 (6) The Company shall on the SRL Railway spur line Operation Date in
19 respect of any SRL Railway spur line notify the Minister that the first
20 carriage of iron ore products over such spur line (other than for
21 construction or commissioning purposes) has occurred.
- 22 (7) The Railway may not at any time, unless the Minister's prior consent
23 is given, be subject to an agreement for the transport of, or access to it
24 to transport, Government Agreement Product.
- 25 (8) The Company acknowledges that one of the intentions of the State
26 and the Company in entering into this Agreement is that the Access
27 Act and the Access Code apply to and in respect of the Railway (but
28 not to the Company's rolling stock, rolling stock maintenance
29 facilities, office buildings, housing, freight centres, terminal yards and
30 depots and any other facilities which are not railway infrastructure (as
31 that term is defined in the Access Act)) and access roads of the
32 Company within the Railway Corridor and within the Port Railway
33 Area, unless the Company submits a written undertaking to the
34 Commission under Division 6 of Part IIIA of the Australian
35 Consumer Law for the provision of haulage services (including of

- 1 iron ore) over the Railway and the Commission accepts the proposed
2 undertaking under Division 6 of Part IIIA of the Australian Consumer
3 Law (in which case the accepted undertaking shall apply). The
4 Company:
- 5 (a) acknowledges that the State shall from time to time be
6 entitled to make such legislative changes as are necessary to
7 achieve that purpose; and
- 8 (b) shall do all such things as the Minister reasonably requests
9 for the purposes of the Access Code applying and continuing
10 to apply to and in respect of the Railway which are not
11 inconsistent with this Agreement.
- 12 (9) During the period prior to the Access Date:
- 13 (a) subject to subclause (9)(b), no agreement for access to the
14 Railway or provision of rail transport services over the
15 Railway (including for purposes of transport of iron ore
16 products) shall be made without the prior consent of the
17 Minister; and
- 18 (b) one or more agreements for access to the Railway or
19 provision of rail transport services over the Railway for the
20 purposes of the transport of iron ore products may be made
21 without the prior consent of the Minister, but such
22 agreements:
- 23 (i) shall only be entered into by the Company;
- 24 (ii) shall not, either alone or when taken together, allow
25 or provide for the transport (whether by the
26 Company or any other person using the Railway) of
27 more than 50 million tonnes of iron ore products
28 over the Railway in any year during the currency of
29 this Agreement; and
- 30 (iii) shall comply with subclause (10).
- 31 (10) The Company shall ensure that each agreement for access to the
32 Railway or provision of rail transport services over the Railway
33 entered into prior to the Access Date:

- 1 (a) does not and will not in any way prevent alteration of
2 practices or methods of operation in relation to control and
3 management of the Railway and its use (including in respect
4 of allocation and management of the use of train paths on the
5 Railway and management of train control and operating
6 standards for the Railway) to the extent necessary to comply
7 with obligations of a railway owner in connection with the
8 Railway under the Access Act and the Access Code after the
9 Access Date (including obligations to comply with train
10 management guidelines in connection with the Railway from
11 time to time approved or determined under section 43 of the
12 Access Code and directions given under that section,
13 statements of policy in connection with the Railway from
14 time to time approved or determined under section 44 of the
15 Access Code and an arrangement from time to time approved,
16 and directions from time to time given, under section 29 of
17 the Access Act for or to the railway owner in respect of the
18 Railway);
- 19 (b) without limiting subclause (10)(a):
- 20 (i) does not and will not in any way limit the discretion
21 of the Regulator in approving, determining or giving
22 a direction in respect of train management guidelines
23 in connection with the Railway under section 43 of
24 the Access Code or approving or determining a
25 statement of policy in connection with the Railway
26 under section 44 of the Access Code or under
27 section 29 of the Access Act approving an
28 arrangement for or issuing a direction to the railway
29 owner in respect of the Railway; and
- 30 (ii) provides that, if any provision of the agreement is
31 inconsistent with a provision of the Access Act or
32 the Access Code in effect as at the Access Date
33 (other than a provision in Schedule 4 of the Access
34 Code), or inconsistent with any statement, document,
35 determination or other requirement issued, made,
36 approved or determined under either or both of the
37 Access Act and the Access Code as at the Access
38 Date, the relevant provision of the Access Act or the
39 Access Code or the statement, document,

- 1 Consumer Law for the provision of haulage services
2 (including of iron ore) over the Railway, it must provide the
3 State with at least 12 months' notice of such intention.
- 4 (c) Without limiting its obligation under paragraph (a) the
5 Company must consult with and keep the State fully
6 informed with respect to the proposed provisions of such
7 access undertaking.
- 8 (d) If the Company gives a written undertaking to the
9 Commission under Division 6 of Part IIIA of the Australian
10 Consumer Law for the provision of haulage services
11 (including of iron ore) over the Railway, then:
- 12 (i) from and including the ACL Undertaking
13 Acceptance Date the Company shall be released
14 from any outstanding obligation it may have under
15 subclauses (8)(b), (9), (10) or (13) or to promote
16 under subclause (12) use by persons of the Railway
17 as formerly proposed by the application of the
18 Access Act and the Access Code; and
- 19 (ii) from and including the ACL Undertaking
20 Acceptance Date, the Company must, at all times,
21 have in place during the currency of this Agreement
22 an undertaking under Division 6 of Part IIIA of the
23 Australian Consumer Law for the provision of
24 haulage services (including of iron ore) over the
25 Railway.
- 26 (e) Nothing in this clause shall be taken to limit rights of the
27 State to make under the Australian Consumer Law or
28 otherwise such submissions as it thinks fit in respect of any
29 such access undertaking application by the Company.
- 30 (12) The Company shall after the Railway Operation Date use all
31 reasonable endeavours to promote access to, and attract customers for,
32 the Railway.

- 1 (13) The Company shall:
- 2 (a) ensure that the publication referred to in Part 2A of the
3 Access Code is prepared and made available for purchase no
4 later than 7 days after the Access Act and the Access Code
5 apply to the Railway;
- 6 (b) ensure the submission to the Regulator of the arrangement for
7 the railway owner in respect of the Railway required to be
8 approved by the Regulator under section 29 of the Access
9 Act, each of the statements in connection with the Railway
10 required to be prepared and submitted to the Regulator under
11 sections 43(3), 44(2), 46(1) and 47(1) of the Access Code and
12 any other document the subject of a notice from the Minister
13 to the Company, being a document which the Access Act or
14 the Access Code requires to be submitted by a railway owner
15 to the Regulator, no later than 7 days after the Access Act and
16 the Access Code apply to the Railway or such earlier date
17 specified in the Access Act or the Access Code (as the case
18 may be) for preparation and submission of such arrangement
19 or statements;
- 20 (c) conduct itself in such a manner as to, and do all such things
21 as are reasonable to, facilitate the approval or determination
22 of:
- 23 (i) train management guidelines in connection with the
24 Railway under section 43 of the Access Code;
- 25 (ii) statements of policy in connection with the Railway
26 under section 44 of the Access Code;
- 27 (iii) costing principles in connection with the Railway
28 under section 46 of the Access Code;
- 29 (iv) over-payment rules in connection with the Railway
30 under section 47 of the Access Code;
- 31 (v) an arrangement referred to in section 29(1) of the
32 Access Act for the railway owner in respect of the
33 Railway; and
- 34 (vi) any other document or matter the subject of a notice
35 from the Minister to the Company, being a document

- 1 or matter which the Access Act or the Access Code
2 requires be approved or determined in connection
3 with a railway owner,

4 as soon as possible after the Access Act and the Access
5 Code apply to the Railway; and

6 (d) ensure the submission to the Regulator within 3 months of the
7 Access Act and the Access Code applying to any expansion
8 or extension (including any spur line) of the Railway of new
9 or amended guidelines, statements of policy, principles, rules,
10 arrangements and other documents and matters referred to in
11 this subclause (13) as may be required by the Access Act and
12 the Access Code in respect of the relevant expansion or
13 extension of the Railway and conduct itself in such manner as
14 to, and do all such things as are reasonable to, facilitate the
15 approval or determination of new or amended document and
16 matters.
- 17 (14) Nothing in this clause shall be taken to exempt the railway owner in
18 respect of the Railway from any obligation or requirement of the
19 railway owner under the Access Act or the Access Code.
- 20 (15) Nothing in this Agreement shall be taken to limit the rights of the
21 State to regulate access to the Port or to the Port Facilities in the
22 future, or the Company's obligations to comply in respect of any such
23 regulation.
- 24 **17. Compliance with Laws**
- 25 (1) In the construction operation maintenance and use of any work,
26 installation, plant, machinery, equipment, service or facility provided
27 or controlled by the Company, the Company shall throughout the
28 currency of this Agreement comply with and observe the provisions
29 hereof and subject thereto the laws for the time being in force in the
30 said State.
- 31 (2) Except as otherwise provided in this Agreement, the Company shall
32 be responsible for obtaining such leases, authorities, permits and
33 licences as it shall require for the obtaining of stone, sand, clay and
34 gravel for the construction of the Railway and the Lateral Access
35 Roads.

1 **18. Maintenance**

2 Throughout the currency of this Agreement the Company shall at all
3 times keep and maintain in good repair and working order and
4 condition (which obligation includes, where necessary, replacing or
5 renewing all parts which are worn out or in need of replacement or
6 renewal due to their age or condition) the Railway, Additional
7 Infrastructure (if any), access roads, and all such other works,
8 installations, plant, machinery and equipment for the time being the
9 subject of this Agreement.

10 **19. Use of local labour professional services and materials**

11 (1) Except as otherwise agreed by the Minister the Company shall, for the
12 purposes of this Agreement:

13 (a) except in those cases where the Company can demonstrate it
14 is not reasonable and economically practicable so to do, use
15 labour available within the said State (using all reasonable
16 endeavours to ensure that as many as possible of the
17 workforce be recruited from the Pilbara region) or if such
18 labour is not available then, except as aforesaid, use labour
19 otherwise available within Australia;

20 (b) as far as it is reasonable and economically practicable so to
21 do, use the services of engineers, surveyors, architects and
22 other professional consultants experts and specialists, project
23 managers, manufacturers, suppliers and contractors resident
24 and available within the said State, or if such services are not
25 available within the said State, then, as far as practicable as
26 aforesaid, use the services of such persons otherwise
27 available within Australia;

28 (c) during design and when preparing specifications, calling for
29 tenders and letting contracts for works, materials, plant,
30 equipment and supplies (which shall at all times, except
31 where it is impracticable so to do, use or be based upon
32 Australian Standards and Codes) ensure that suitably
33 qualified Western Australian and Australian suppliers,
34 manufacturers and contractors are given fair and reasonable
35 opportunity to tender or quote;

- 1 (d) give proper consideration and, where possible, preference to
2 Western Australian suppliers, manufacturers and contractors
3 when letting contracts or placing orders for works, materials,
4 plant, equipment and supplies where price, quality, delivery
5 and service are equal to or better than that obtainable
6 elsewhere or, subject to the foregoing, give that consideration
7 and, where possible, preference to other Australian suppliers,
8 manufacturers and contracts; and
- 9 (e) if, notwithstanding the foregoing provisions of this subclause,
10 a contract is to be let or an order is to be placed with other
11 than a Western Australian or Australian supplier,
12 manufacturer or contractor, give proper consideration and,
13 where possible, preference to tenders, arrangements or
14 proposals that include Australian participation where price,
15 delivery and service are otherwise equal or better.
- 16 (2) Except as otherwise agreed by the Minister, the Company shall, in
17 every contract entered into with a third party for the supply of
18 services, labour, works, materials, plant, equipment or supplies for the
19 purposes of this Agreement require as a condition thereof that such
20 third party shall undertake:
- 21 (a) the same obligations as are referred to in subclause (1) and
22 shall report to the Company concerning such third party's
23 implementation of that condition; and
- 24 (b) procurement activities in accordance with the plan provided
25 under clause 10.
- 26 (3) The Company shall:
- 27 (a) in respect of developments the subject or to be the subject (as
28 the case may be) of proposals submitted under clause 11,
29 submit a report to the Minister at quarterly intervals from the
30 date specified in clause 3(4) until commissioning of the
31 Railway and Additional Infrastructure (if any) and thereafter
32 as requested by the Minister from time to time; and
- 33 (b) in respect of developments the subject or to be the subject (as
34 the case may be) of proposals submitted under clause 13
35 submit a report to the Minister at quarterly intervals from the
36 date on which it gives notice under clause 13 until

1 commissioning of the developments the subject of the
2 proposals approved pursuant to clause 13 and thereafter as
3 requested by the Minister from time to time,
4 concerning its implementation of the provisions of this clause and of
5 the relevant plan in connection with the development provided
6 pursuant to clause 10, together with a copy of any report received by
7 the Company pursuant to subclause (2) during that quarter or longer
8 period as the case may be PROVIDED THAT the Minister may agree
9 that any such reports need not be provided in respect of contracts of
10 such kind or value as the Minister may from time to time determine.

11 (4) The Company shall keep the Minister informed on a regular basis as
12 determined by the Minister from time to time or otherwise as
13 reasonably required by the Minister during the currency of this
14 Agreement of any services (including any elements of the project
15 investigations, design and management) and any works, materials,
16 plant, equipment and supplies that it may be proposing to obtain from
17 or have carried out or permit to be obtained from or carried out
18 outside Australia, together with its reasons therefor and shall, as and
19 when required by the Minister, consult with the Minister with respect
20 thereto.

21 **20. No discriminatory charges**

22 Except as provided in this Agreement the State must not impose, nor
23 shall it permit or authorise any local government or any agency,
24 instrumentality or other authority of the State to impose,
25 discriminatory taxes, rates or charges of any nature whatsoever on or
26 in respect of the titles, property or other assets, products, materials or
27 services used or produced by or through the activities of the Company
28 in the conduct of the Project, nor will the State take or permit to be
29 taken by any such State agency, instrumentality or other authority of
30 the State any other discriminatory action which would deprive the
31 Company of full enjoyment of the rights granted or intended to be
32 granted under this Agreement. In the application of this clause the
33 conferral of rights upon parties to other Government agreements shall
34 be disregarded.

35 **21. Taking of land for the purposes of this Agreement**

36 (1) The State is hereby empowered, as and for a public work under
37 Parts 9 and 10 of the LAA and the *Public Works Act 1902* (WA), to

- 1 take for the purposes of this Agreement any land (other than any part
2 of the Port) which in the opinion of the Company is necessary for the
3 Project and which the Minister determines is appropriate to be taken
4 for the Project (except any land the taking of which would be contrary
5 to the provisions of a Government agreement entered into before the
6 submission of the proposals relating to the proposed taking) and
7 notwithstanding any other provisions of those Acts may license that
8 land to the Company.
- 9 (2) In applying Parts 9 and 10 of the LAA and the *Public Works Act 1902*
10 (WA) for the purposes of this Clause -
- 11 (a) "land" in those Acts includes a legal or equitable estate or
12 interest in land;
- 13 (b) sections 170, 171, 172, 173, 174, 175 and 184 of the LAA do
14 not apply; and
- 15 (c) the LAA applies as if it were modified in section 177(2) by
16 inserting -
- 17 (i) after "railway" the following -
18 "or land is being taken pursuant to a Government
19 agreement as defined in section 2 of the Government
20 Agreements Act 1979"; and
- 21 (ii) after "that Act" the following -
22 "or that agreement as the case may be".
- 23 (3) The Company shall pay to the State on demand the costs of or
24 incidental to any land taken at the request of and on behalf of the
25 Company including but not limited to any compensation payable to
26 any holder of native title or of native title rights and interests in the
27 land.

28 **22. No taking of land**

29 Subject to the performance by the Company of its obligations under
30 this Agreement, but without limiting clause 15(3), the State shall not,
31 during the currency of this Agreement, without the consent of the
32 Company, take or suffer or permit to be taken by any local
33 government or by any agency, instrumentality or other authority of
34 the State any of the works, installations, plant, equipment or other

1 property for the time being belonging to the Company and the subject
2 of or used for the purpose of this Agreement or any of the works on
3 the lands the subject of the Special Railway Licence and, without
4 such consent (which shall not be unreasonably withheld), the State
5 shall not create or grant or permit or suffer to be created or granted by
6 any agency, instrumentality or other authority of the State any road,
7 right-of-way, water right or easement of any nature or kind
8 whatsoever over or in respect of any such lands which may unduly
9 prejudice or interfere with the Company's activities under this
10 Agreement.

11 **23. Commonwealth licences and consents**

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

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

22 **24. Zoning**

23 The State shall ensure after consultation with the relevant local
24 governments that the lands the subject of the Special Railway Licence
25 or a Lateral Access Road Licence shall be and remain zoned for use
26 or otherwise protected during the currency of this Agreement so that
27 the activities of the Company hereunder may be undertaken and
28 carried out thereon without any interference or interruption by the
29 State, by any agency, instrumentality or other authority of the State or
30 by any local government on the ground that such activities are
31 contrary to any zoning by-law, regulation or order.

32 **25. Assignment**

33 (1) Subject to the provisions of this clause the Company may at any time
34 with the consent of the Minister assign, mortgage, charge, sublet or
35 dispose of to any person the whole or any part of the rights of the
36 Company hereunder (including to ownership of the Railway,

1 Additional Infrastructure (if any) and its right to or as the holder of
2 the Special Railway Licence or a Lateral Access Road Licence) and
3 of the obligations of the Company hereunder, subject however in the
4 case of an assignment or disposition to the assignee or donee (as
5 the case may be) executing in favour of the State (unless the Minister
6 otherwise determines) a deed of covenant in a form to be approved by
7 the Minister to comply with observe and perform the provisions
8 hereof on the part of the Company to be complied with, observed or
9 performed in regard to the matter or matters the subject of such
10 assignment or disposition.

11 (2) Notwithstanding anything contained in or anything done under or
12 pursuant to subclause (1) the Company will at all times during the
13 currency of this Agreement be and remain liable for the due and
14 punctual performance and observance of all the covenants and
15 agreements on its part contained in this Agreement PROVIDED
16 THAT the Minister may agree to release the Company from such
17 liability where the Minister considers such release will not be contrary
18 to the interests of the State.

19 (3) Notwithstanding the provision of the Mining Act insofar as the same
20 may apply:

21 (a) no assignment, mortgage, charge, sublease or disposition
22 made or given of or over the Special Railway Licence or any
23 other licence granted pursuant to this Agreement in
24 accordance with the provisions of subclause (1) and the terms
25 of consent thereunder; and

26 (b) no transfer, assignment, mortgage or sublease made or given
27 in exercise of any power contained in any such mortgage or
28 charge,

29 shall require any approval or consent other than such consent as may
30 be necessary under subclause (1) and no equitable mortgage or charge
31 shall be rendered ineffectual by the absence of any approval or
32 consent (otherwise than as required by this clause) or because the
33 same is not registered under the provisions of the Mining Act.

34 **26. Variation or determination**

35 (1) The parties to this Agreement may from time to time by agreement in
36 writing add to, substitute for, cancel or vary all or any of the

- 1 provisions of this Agreement for the purpose of more efficiently or
2 satisfactorily implementing or facilitating any of the objects of this
3 Agreement.
- 4 (2) The Minister shall cause any agreement made pursuant to
5 subclause (1) to be laid on the Table of each House of Parliament
6 within 12 sitting days next following its execution.
- 7 (3) Either House may, within 12 sitting days of that House after the
8 agreement has been laid before it, pass a resolution disallowing the
9 agreement, but if after the last day on which the agreement might
10 have been disallowed neither House has passed such a resolution the
11 agreement shall have effect from and after that last day.
- 12 (4) The parties may at any time by mutual agreement determine this
13 Agreement, provided that no matter in connection with a failure by
14 the parties to agree under this subclause (4) shall be referable to
15 arbitration hereunder.

16 **27. Force majeure**

17 This Agreement shall be deemed to be made subject to any delays in
18 the performance of the obligations under this Agreement and to the
19 temporary suspension of continuing obligations under this Agreement
20 that may be caused by or arise from circumstances beyond the power
21 and control of the party responsible for the performance of those
22 obligations including (without limiting the generality of the
23 foregoing) delays or any such temporary suspension as aforesaid
24 caused by or arising from act of God, force majeure, earthquakes,
25 floods, storms, tempest, washaways, fire (unless caused by the actual
26 fault or privity of the party responsible for such performance), act of
27 war, act of public enemies, riots, civil commotions, strikes, lockouts,
28 stoppages, restraint of labour or other similar acts (whether partial or
29 general), acts or omissions of the Commonwealth, shortages of labour
30 or essential materials, reasonable failure to secure contractors, delays
31 of contractors, factors due to overall world economic conditions or
32 factors due to action taken by or on behalf of any government or
33 governmental authority (other than the State or any agency,
34 instrumentality or other authority of the State) or factors that could
35 not reasonably have been foreseen PROVIDED ALWAYS that the
36 party whose performance of obligations is affected by any of the said
37 causes must promptly give notice to the other party or parties of the

1 event or events and shall use its best endeavours to minimise the
2 effects of such causes as soon as possible after the occurrence.

3 **28. Power to extend periods**

4 (1) Notwithstanding any provision of this Agreement but subject to
5 subclause (2), the Minister may at the request of the Company from
6 time to time extend or further extend any period or vary or further
7 vary any date referred to in this Agreement for such period or to such
8 later date as the Minister thinks fit, whether or not the period to be
9 extended has expired or the date to be varied has passed.

10 (2) The date specified in clause 11(1) for the submission of proposals
11 under it may only be extended once pursuant to this clause and for a
12 period not exceeding 18 months.

13 **29. Determination of Agreement**

14 (1) If:

15 (a) (i) the Company makes default which the State considers
16 material in the due performance or observance of any
17 of the covenants or obligations of the Company in
18 this Agreement or in the Special Railway Licence or
19 in a Lateral Access Road Licence; or

20 (ii) the Company abandons or repudiates this Agreement
21 or abandons or repudiates its activities under this
22 Agreement,

23 and such matter is not remedied within a period of 180 days
24 after notice is given by the State as provided in subclause (2)
25 or if the matter is referred to arbitration, then within the
26 period mentioned in subclause (3); or

27 (b) the Company goes into liquidation (other than a voluntary
28 liquidation for the purpose of reconstruction) and unless
29 within 3 months from the date of such liquidation the interest
30 of the Company is assigned to an assignee approved by the
31 Minister under clause 25; or

32 (c) construction of the SRL Railway and Additional
33 Infrastructure (if any) has not commenced within 2 years (or

- 1 such longer period as the Minister may allow) of the approval
2 of the proposals submitted pursuant to clause 11(1); or
- 3 (d) the Railway Operation Date does not occur within 4 years (or
4 such longer period as the Minister may allow) after the grant
5 of the Special Railway Licence and the State has then given
6 the Company notice that it may determine this Agreement if
7 that date does not occur within a period of 180 days after
8 such notice is given by the State and that date has not
9 occurred within the said period of 180 days; or
- 10 (e) iron ore products are not transported upon the Railway for a
11 continuous period of 3 years (or such longer period, not
12 exceeding 5 years, as in any particular instance the Minister
13 may approve acting with the concurrence of the Port
14 Authorities Minister) and the State has given the Company
15 notice that it may determine this Agreement if such transport
16 does not resume within a period of 180 days after such notice
17 is given by the State and such transport has not resumed
18 within the said period of 180 days,
- 19 the State may by notice to the Company determine this Agreement.
- 20 (2) The notice to be given by the State to the Company in terms of
21 subclause (1)(a) must specify the nature of the default or other ground
22 so entitling the State to exercise such right of determination and,
23 where appropriate and known to the State, the party or parties
24 responsible therefor and shall be given to the Company and all such
25 assignees, mortgagees, chargees and disponees for the time being of
26 the Company's said rights to or in favour of whom or by whom an
27 assignment, mortgage, charge or disposition has been effected in
28 terms of clause 25, whose name and address for service of notice has
29 previously been notified to the State by the Company or, any such
30 assignee, mortgagee, chargee or disponee.
- 31 (3) (a) If the Company contests the alleged default or other ground
32 referred to in subclause (1)(a) the Company shall within
33 60 days after notice given by the State as provided in
34 subclause (2) refer the matter in dispute to arbitration.
- 35 (b) If the question is decided against the Company, the Company
36 must comply with the arbitration award within a reasonable
37 time to be fixed by that award PROVIDED THAT if the

- 1 arbitrator finds that there was a bona fide dispute and that the
2 Company was not dilatory in pursuing the arbitration, the
3 time for compliance with the arbitration award shall not be
4 less than 90 days from the date of such award.
- 5 (4) If the default referred to in subclause (1)(a) has not been remedied
6 within a period of 180 days after receipt of the notice referred to in
7 that subclause or within the time fixed by the arbitration award as
8 aforesaid, the State, instead of determining this Agreement as
9 aforesaid because of such default may itself remedy such default or
10 cause the same to be remedied (for which purpose the State by agents,
11 workmen or otherwise shall have full power to enter upon lands
12 occupied by the Company and to make use of all plant, machinery,
13 equipment and installations thereon) and the actual costs and expenses
14 incurred by the State in remedying or causing to be remedied such
15 default shall be a debt payable by the Company to the State on
16 demand.
- 17 (5) The State hereby waives its rights to seek by court action for specific
18 performance to compel the Company to submit proposals or resubmit
19 proposals under clause 11 in the event that before approval of
20 proposals under clause 12, the Company repudiates this Agreement.
- 21 **30. Effect of cessation or determination of Agreement**
- 22 (1) On the cessation or determination of this Agreement:
- 23 (a) except as otherwise agreed by the Minister the rights of the
24 Company to, in or under this Agreement and the rights of the
25 Company or any mortgagee or chargee to or in the SRL
26 Railway, Additional Infrastructure (if any), access roads and
27 other works constructed under this Agreement or to, in or
28 under the Special Railway Licence or Lateral Access Road
29 Licences (if still current), shall thereupon cease and
30 determine but without prejudice to the liability of any of the
31 parties hereto in respect of any antecedent breach or default
32 under this Agreement or in respect of any guarantee or
33 indemnity given under this Agreement;
- 34 (b) the Company shall forthwith pay to the State all money which
35 may then have become payable or accrued due; and

- 1 (c) save as aforesaid and as otherwise provided in this
2 Agreement none of the parties shall have any claim against
3 the other of them with respect to any matter or thing in or
4 arising out of this Agreement.
- 5 (2) Upon the cessation or determination of this Agreement;
- 6 (a) the Minister may by notice to the Company require the
7 Company to, at the Company's cost, remove the SRL
8 Railway, Additional Infrastructure (if any) and any other
9 works constructed under this Agreement from the Railway
10 Corridor and return the land in the Railway Corridor to a
11 condition as near as possible to the condition that land was in
12 prior to the grant of authority under the LAA in respect of the
13 land as contemplated by clause 4; and
- 14 (b) unless the Minister gives notice under subclause (2)(a), the
15 SRL Railway, Additional Infrastructure (if any) and the
16 works constructed under this Agreement shall become and
17 remain the absolute property of the State without the payment
18 of any compensation or consideration to the Company or any
19 other party and freed and discharged from all mortgages and
20 other encumbrances and the Company shall do and execute
21 all such deeds, documents and other acts, matters and things
22 (including surrenders) as the State may reasonably require to
23 give effect to the provisions of this subclause.

24 **31. Indemnity**

25 The Company shall indemnify and keep indemnified the State and its
26 servants, agents and contractors in respect of all actions, suits, claims,
27 demands or costs of third parties arising out of or in connection with
28 any work carried out by or on behalf of the Company pursuant to this
29 Agreement or relating to its activities hereunder or arising out of or in
30 connection with the construction, maintenance or use by the Company
31 or its servants, agents, contractors or assignees of the Company's
32 works or services the subject of this Agreement or the plant apparatus
33 or equipment installed in connection therewith PROVIDED THAT
34 subject to the provisions of any relevant Act, such indemnity will not
35 apply in circumstances where the State, its servants, agents, or
36 contractors are negligent in carrying out work for the Company
37 pursuant to this Agreement.

1 **32. Subcontracting**

2 Without affecting the liabilities of the parties under this Agreement
3 each of the State and the Company will have the right from time to
4 time to entrust to third parties the carrying out as their agent of any
5 portions of the activities which it is authorised or obliged to carry out
6 hereunder.

7 **33. Arbitration**

8 (1) Except as provided in this Agreement, any dispute or difference
9 between the State and the Company arising out of or in connection
10 with this Agreement, the construction of this Agreement or as to the
11 rights, duties or liabilities of either of them under this Agreement or
12 as to any matter to be agreed upon between them under this
13 Agreement must, in default of agreement between them and in the
14 absence of any provision in this Agreement to the contrary, be
15 referred to and settled by arbitration under the provisions of the
16 *Commercial Arbitration Act 2012* (WA) and each party may be
17 represented before the arbitrator by a duly qualified legal practitioner
18 or other representative.

19 (2) Except where otherwise provided in this Agreement, the provisions of
20 this clause will not apply to any case where the State, the Minister or
21 any other Minister in the Government of the State is by this
22 Agreement given either expressly or impliedly a discretionary power.

23 (3) The arbitrator of any submission to arbitration under this Agreement
24 is hereby empowered upon the application of either the State or the
25 Company, to grant in the name of the Minister any interim extension
26 of any period or variation of any date referred to herein which having
27 regard to the circumstances may reasonably be required in order to
28 preserve the rights of that party or of the parties to the arbitration and
29 an award may in the name of the Minister grant any further extension
30 or variation for that purpose.

31 **34. Consultation**

32 The Company must during the currency of this Agreement consult
33 with and keep the State fully informed on a confidential basis
34 concerning any action that the Company proposes to take with any
35 third party (including the Commonwealth or any Commonwealth
36 constituted agency, authority, instrumentality or other body) which

1 might significantly affect the overall interest of the State under this
2 Agreement.

3 **35. Notices**

4 Any notice, consent or other writing authorised or required by this
5 Agreement to be given or sent by the State to the Company or to a
6 Guarantor will be deemed to have been duly given or sent if signed by
7 the Minister or by any senior officer of the Public Service of the State
8 acting by the direction of the Minister and forwarded by prepaid post
9 or handed to the Company or to the Guarantor (as the case may be) at
10 its address hereinbefore set forth or other address in Western Australia
11 nominated by the Company or by a Guarantor (as the case may be) to
12 the Minister, and by the Company or by a Guarantor to the State if
13 signed on its behalf by any person or persons authorised by the
14 Company or by its solicitors, or by the Guarantor or by its solicitors
15 (as the case may be), as notified to the State from time to time and
16 forwarded by prepaid post or handed to the Minister and except in the
17 case of personal service any such notice, consent or writing shall be
18 deemed to have been duly given or sent on the day on which it would
19 be delivered in the ordinary course of post.

20 **36. Guarantee of the Company's performance**

21 (1) Notwithstanding any addition to or deletion or variation of the
22 provisions of this Agreement or any time or other indulgence granted
23 by the State or by the Minister to the Company whether or not notice
24 thereof is given to a Guarantor by the State, the Guarantors hereby
25 guarantee to the State the due performance by the Company of all of
26 the Company's obligations to be performed hereunder and, subject to
27 subclause (2), this guarantee shall continue notwithstanding the
28 cessation or determination of this Agreement.

29 (2) The Minister may agree to release a Guarantor or the Guarantors (as
30 the case may be) from this guarantee where:

31 (a) the Minister is reasonably satisfied that the Company has the
32 financial capacity to perform its obligations under this
33 Agreement; or

34 (b) one or more companies (including if applicable a continuing
35 Guarantor) with the financial capacity to guarantee the due
36 performance by the Company of all the Company's then

1 outstanding obligations under this Agreement have assumed
2 the obligations of the released Guarantor or Guarantors (as
3 the case may be) under this clause on terms acceptable to the
4 Minister.

5 **37. Term of Agreement**

6 (1) Subject to the provisions of clauses 12(5), 12(6), 29 and 30, this
7 Agreement shall expire on the expiration or sooner determination or
8 surrender of the Special Railway Licence.

9 (2) Unless this Agreement has already determined, at any time within
10 5 years prior to the expiry date of the Special Railway Licence the
11 State shall, at the request of the Company, confer with the Company
12 with respect to agreeing to commence negotiations for a new
13 agreement or a variation of this Agreement involving an extension of
14 the term of the Special Railway Licence. The provisions of clause 33
15 shall not apply to this clause.

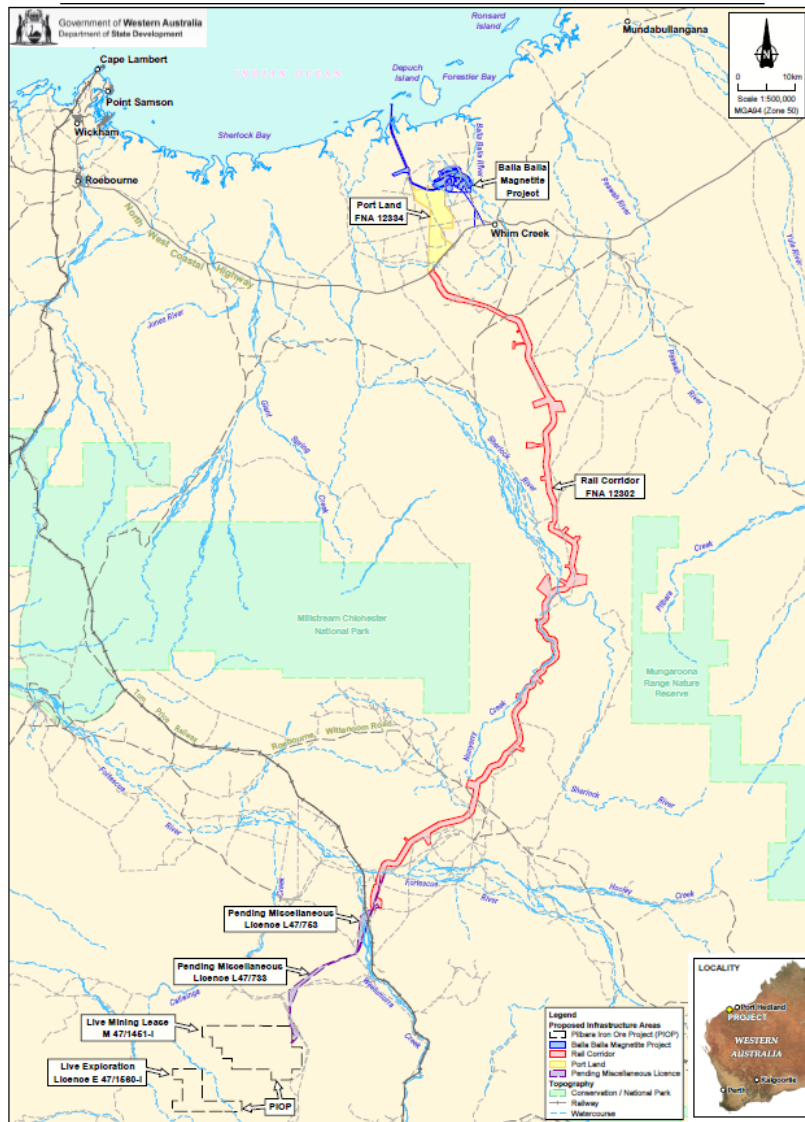
16 **38. Applicable law and Submission to Jurisdiction**

17 This Agreement is to be interpreted according to the law for the time
18 being in force in the State of Western Australia and the parties to this
19 Agreement submit to the jurisdiction of the courts of Western
20 Australia in relation to any action or proceeding to settle any dispute
21 or question arising out of or in connection with this Agreement.

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SCHEDULE 1

**INDICATIVE PLAN OF ANTICIPATED RAIL ROUTE AND
CORRIDOR FROM THE PIOP MINING AREA LOADING POINT TO
THE PORT (ILLUSTRATIVE PURPOSES ONLY)**



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6

SCHEDULE 2

WESTERN AUSTRALIA

RAILWAY (BBI RAIL AUS PTY LTD) AGREEMENT ACT [DATE]

MINING ACT 1978

**MISCELLANEOUS LICENCE FOR A RAILWAY AND OTHER
PURPOSES**

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by the *Railway (BBI Rail Aus Pty Ltd Agreement Act [Date]* the State agreed to grant to BBI Rail Aus Pty Ltd ABN 44 604 857 392 of Level 3, 151 Macquarie Street, Sydney, New South Wales (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction, operation and maintenance of the SRL Railway (as defined in the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Company pursuant to clause 14(1) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Railway (BBI Rail Aus Pty Ltd) Agreement Act [Date]* the Company is hereby granted by this licence authority to conduct on the land the subject of this licence as more particularly delineated and described from time to time in the Schedule hereto all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce in accordance with the Agreement and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance on the land the subject of this licence of the SRL Railway and access roads and Additional Infrastructure (if any) to be located on the land the subject of this licence in accordance with the provisions of the Agreement and proposals approved under the Agreement, for the term of 20 years from the date hereof (subject to the sooner determination of the term upon the determination of the Agreement) and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 14(1)(a) of the Agreement with the right as

1 provided in the Agreement for the Company during the currency of the
2 Agreement to take 2 successive renewals of the term each for a further period of
3 10 years upon the same terms and conditions (subject to the sooner
4 determination of the term upon the determination of the Agreement)
5 PROVIDED THAT the Minister is satisfied that the SRL Railway is, at the date
6 of the relevant renewal, operational and being used for the transport of iron ore
7 products to the Port PROVIDED ALWAYS that this licence shall not be
8 determined or forfeited otherwise than in accordance with the Agreement.

9 In this licence:

- 10 - If the Company be more than one the liability of the Company
11 hereunder shall be joint and several.
- 12 - Reference to an Act includes all amendments to that Act for the time
13 being in force and also any Act passed in substitution therefor or in
14 lieu thereof and to the regulations and by-laws of the time being in
15 force thereunder.
- 16 - Reference to "the Agreement" means such agreement as varied from
17 time to time.
- 18 - The terms "Additional Infrastructure", "approved proposals", "Port",
19 "Railway Operation Date", "SRL Railway" and "SRL Railway spur
20 line" have the meanings given in the Agreement.

21 **ENDORSEMENTS AND CONDITIONS**

22 Endorsements

- 23 1. This licence is granted in accordance with proposals submitted on
24 [], and approved by the Minister (as defined in the Agreement) on
25 [], under the Agreement.
- 26 2. The Company is permitted to, in accordance with approved proposals,
27 take stone, sand, clay and gravel from the land the subject of this
28 licence (including for the avoidance of doubt any area of land
29 included in this licence pursuant to clause 14(8) of the Agreement) for
30 the construction, operation and maintenance of the SRL Railway
31 (including any SRL Railway spur line constructed within or approved
32 for construction within the area of land the subject of this licence).
- 33 3. Notwithstanding the *Mining Act 1978*, no royalty shall be payable
34 under the *Mining Act 1978* in respect of stone, sand, clay and gravel

1 which the Company is permitted by the Agreement to obtain from the
2 land the subject of this licence.

3 4. [Any further endorsement which the Minister for Mines may,
4 consistent with the provisions of the Agreement, determine and
5 thereafter impose in respect of this licence including during the term
6 of the Agreement.]

7 **Conditions**

8 1. (a) Except as provided in paragraph (b), the Company shall
9 within 2 years after the Railway Operation Date surrender in
10 accordance with the provisions of the *Mining Act 1978* the
11 area of this licence down to a maximum of 100 metres width
12 or as otherwise approved by the Minister (as defined in the
13 Agreement) for the safe operation of the SRL Railway then
14 constructed or approved for construction under approved
15 proposals.

16 (b) Paragraph (a) shall not apply to land the subject of this
17 licence that was included in this licence pursuant to
18 clause 14(8) of the Agreement.

19 2. The Company shall as soon as possible after the construction of a
20 SRL Railway spur line or of an expansion or extension thereof as the
21 case may be surrender in accordance with the *Mining Act 1978* the
22 land the subject of this licence that was included in this licence
23 pursuant to clause 14(8) of the Agreement for the purpose of such
24 construction down to a maximum of 100 metres in width or as
25 otherwise approved by the Minister (as defined in the Agreement) for
26 the safe operation of that SRL Railway spur line or expansion or
27 extension thereof as the case may be then constructed or approved for
28 construction under approved proposals.

29 3. [Any further conditions which the Minister for Mines may, consistent
30 with the provisions of the Agreement, determine and thereafter
31 impose in respect of this licence including during the term of the
32 Agreement.]

SCHEDULE 4

WESTERN AUSTRALIA

RAILWAY (BBI RAIL AUS PTY LTD) AGREEMENT ACT [DATE]

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by the *Railway (BBI Rail Aus Pty Ltd) Agreement Act [Date]* the State agreed to grant to BBI Rail Aus Pty Ltd ABN 44 604 857 392] of Level 3, 151 Macquarie Street, Sydney, New South Wales (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction, use and maintenance of the Lateral Access Roads (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 14(2) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Railway (BBI Rail Aus Pty Ltd) Agreement Act [Date]* the Company is hereby authorised to construct, use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 5 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 14(2) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

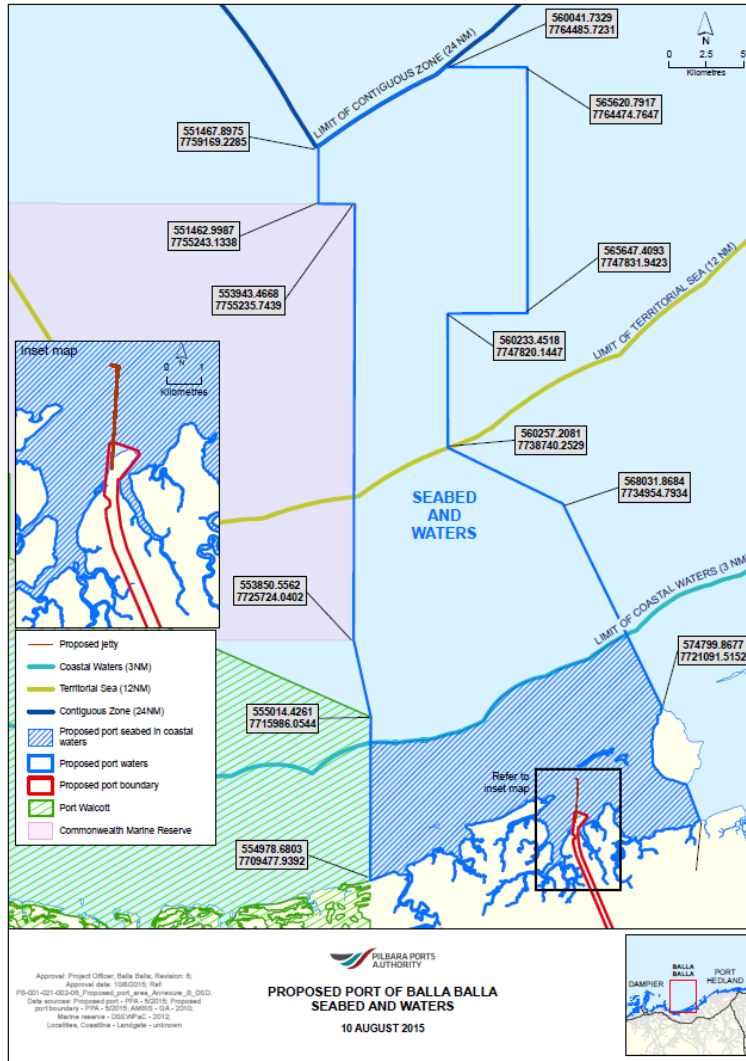
- If the Company be more than one the liability of the Company hereunder shall be joint and several.

- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefor or in

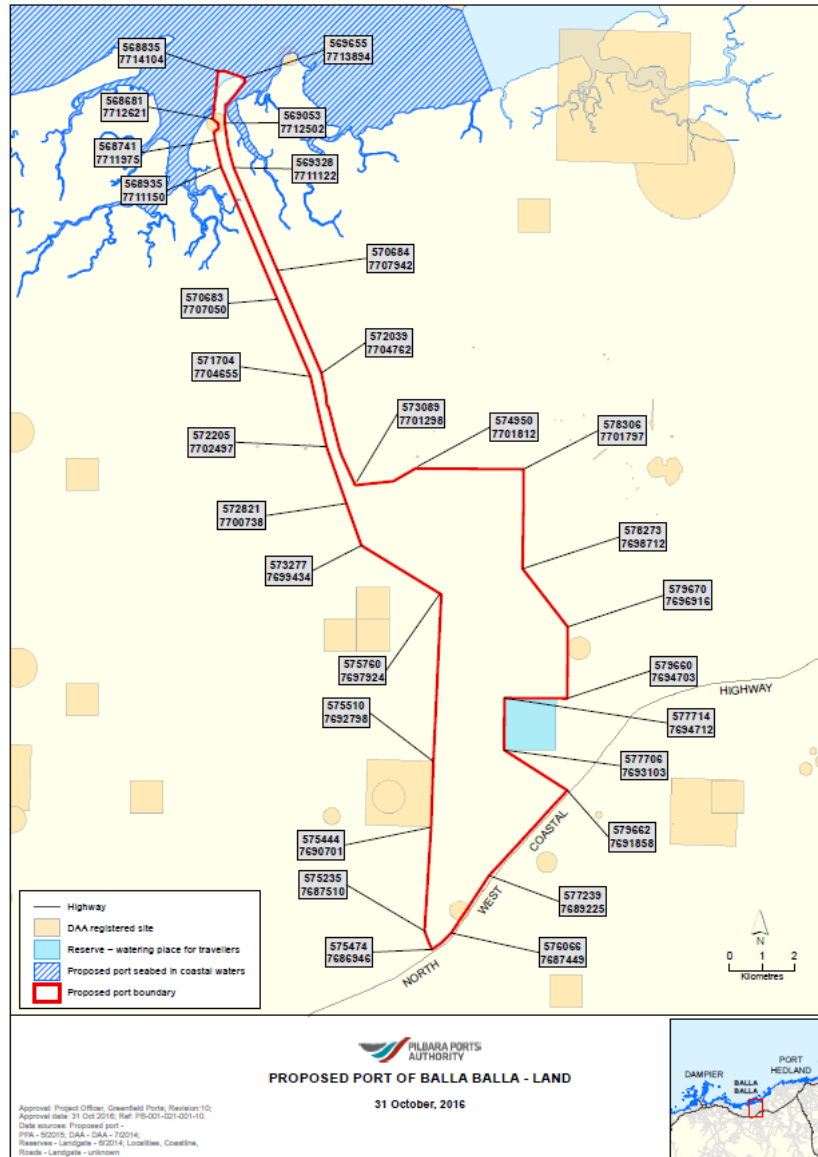
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SCHEDULE 5

**PLANS OF LAND, WATER AND SEABED PROPOSED TO COMPRISE
 THE PORT OF BALLA BALLA**



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

3 **SIGNED** by the **HONOURABLE**)
 COLIN JAMES BARNETT in the) [Signature]
 presence of:)

4 [Signature]

5

6 Witness:

7 Name: WILLIAM RICHARD MARMION

8

9

10

EXECUTED by **BBI RAIL AUS**)
PTY LTD ABN 44 604 857 392 in)
accordance with section 127(1) of)
the *Corporations Act 2001* (Cth) by)
authority of its directors:

[Signature]
Signature of director

JONATHON TERENCE YOUNG
.....
Full name of director (block letters)

[Signature]
Signature of director

NICHOLAS ANTHONY
CURTIS
.....
Full name of director (block letters)

11

EXECUTED by **TODD**)
PETROLEUM **MINING**)
COMPANY LIMITED NZBN)
9429040945767 in accordance with)
section 180 of the *Companies*)
Act 1993 (New Zealand) by
authority of its directors:

[Signature]
.....
Signature of director

CHRISTOPHER BRIAN HALL
.....
Full name of director (block letters)

[Signature]
.....
Signature of director

NICHOLAS JOHN OLSON
.....
Full name of director (block letters)

1
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3

EXECUTED by **TODD**)
OFFSHORE LIMITED NZBN)
9429030115989 in accordance with)
section 180 of the *Companies*)
Act 1993 (New Zealand) by
authority of its directors:

[Signature]
.....
Signature of director

HENRY ALEXANDER BRYAN
TAIT
.....
Full name of director (block letters)

[Signature]
.....
Signature of director

MALCOLM ARTHUR
CHARLES WHYTE
.....
Full name of director (block letters)

4

EXECUTED by **TODD**)
MINERALS LIMITED NZBN)
9429030762596 in accordance with)
section 180 of the *Companies*)
Act 1993 (New Zealand) by authority
of its directors:

[Signature]
.....
Signature of director

CHRISTOPHER BRIAN HALL
.....
Full name of director (block letters)

[Signature]
.....
Signature of director

NICHOLAS JOHN OLSON
.....
Full name of director (block
letters)

1

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