



FORESTRY (AUSTRALIAN PAPER MANUFACTURERS LIMITED)

No. 76 of 1976

ANALYSIS

Preamble.

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AN ACT to make provision for the approval, ratification, and implementation of an agreement between the Premier, the Forestry Commission, and Australian Paper Manufacturers Limited for the variation of the rights of that Company as the holder of a special licence under the Forestry Act 1954.

[15 December 1976]

WHEREAS provision is made by the *Forestry Act 1954* for the Preamble.
grant by the Forestry Commission of a special licence conferring rights on the holder thereof to obtain timber from areas described in that Act:

AND WHEREAS such a licence, dated 8th February 1960, was issued to, and is held by, Australian Paper Manufacturers Limited, a company incorporated in the State of New South Wales and registered as a foreign company, and carrying on business, in this State:

AND WHEREAS an agreement has been entered into between the Premier, the Forestry Commission, and the Company for a proposed variation of the rights of the Company under the said licence:

AND WHEREAS effect cannot be given to the Agreement without the authority of Parliament:

BE it therefore enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title and citation.

1—(1) This Act may be cited as the *Forestry (Australian Paper Manufacturers Limited) Act 1976*.

(2) The *Forestry Act 1954*, as subsequently amended, is in this Act referred to as the Principal Act.

Interpretation.

2—(1) In this Act, unless the contrary intention appears—

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

“ Company ” means Australian Paper Manufacturers Limited referred to in the preamble to this Act;

“ Existing Licence ” and “ New Licence ” have respectively the meanings assigned to those expressions by the Agreement, and other expressions used in this Act have the same meanings as they have for the purposes of the Principal Act.

(2) For the purposes of this Act, subsection (4) of section 16 of the *Huon Valley Pulp and Paper Industry Act 1959* shall be deemed to form part of the Principal Act, and that subsection applies to the rights, concessions, and obligations arising by virtue of this Act or the Agreement as it applies to the rights, concessions, and obligations referred to in that subsection.

Approval, &c., of the Agreement.

3 The Agreement is hereby approved and ratified and, subject to the other provisions of this Act, has effect as if it were enacted herein.

4—(1) By virtue of this Act, the Commission and the Company have, respectively, such powers and authorities as may be necessary to give effect to the Agreement, and, in particular—

Modification
of Principal Act
consequential on
the Agreement.

- (a) the Commission may, in accordance with the Agreement, issue the New Licence or vary the Existing Licence; and
- (b) the Company may surrender its rights and privileges to the extent and in the manner provided for in the Agreement.

(2) Where the New Licence is granted in accordance with the Agreement, the provisions of the Principal Act apply and have effect, subject to the Agreement, as if—

- (a) the Existing Licence and the New Licence, as they have effect for the time being, were one single licence and that single licence were the special licence issued to the Company under the Principal Act; and
- (b) the pulpwood area had been extended to include the land to which the New Licence relates.

(3) Where, in accordance with the Agreement, a variation of the Existing Licence takes effect so that the Company ceases to have any rights and privileges thereunder in respect of any specified land (in this subsection referred to as the “relinquished land”) in substitution for rights and privileges in respect of other specified land (in this subsection referred to as the “substituted land”) the provisions of the Principal Act apply and have effect, subject to the Agreement, as if the relinquished land had been excluded from the pulpwood area and the reserve area, and the pulpwood area had been extended to include the substituted land.

(4) Where the Company for the purposes of the Agreement surrenders its rights and privileges under the Existing Licence in respect of any land, that land, from the date on which the surrender takes effect, shall be deemed to be excluded from the pulpwood area and the reserve area.

(5) Nothing in this Act shall be taken as altering the date of commencement or period of operation of the special licence, and the New Licence shall not continue in force after the Existing Licence has ceased to be in force.

Protection of
Company's
rights in State
reserves.

5 Notwithstanding anything in section 24 of the *National Parks and Wildlife Act* 1970, no proclamation under that Act declaring any land within the pulpwood area or the reserve area (as those areas existed immediately before the execution of the Agreement) shall operate to terminate, discharge, or otherwise abrogate any rights of the Company under the Existing Licence until the New Licence has been issued or the Existing Licence has been varied under the Agreement.

SCHEDULE

(Section 2 (1))

THE AGREEMENT

THIS AGREEMENT is made the 11th day of October One thousand nine hundred and Seventy-six BETWEEN THE HONOURABLE WILLIAM ARTHUR NEILSON Premier (hereinafter referred to as "the Premier") on behalf of the State of Tasmania of the first part THE FORESTRY COMMISSION (hereinafter referred to as "the Commission") of the second part and AUSTRALIAN PAPER MANUFACTURERS LIMITED (hereinafter referred to as "the Company") of the third part and is a Supplemental Agreement to the Licence Agreement dated the 8th day of February 1960 as varied

WHEREAS

- A. The Company has established and developed a wood pulping operation in Southern Tasmania as a result of the encouragement of the Government of the State of Tasmania and ratified by Parliament in the Huon Valley Pulp and Paper Industry Act 1959 and the Company has in good faith incurred substantial capital expenditure in reliance upon such encouragement and the rights conferred on the Company by the Existing Licence referred to in Recital B issued to the Company
- B. The Company holds a special licence granted to it by the Commission pursuant to the provisions of Section 3 of the Forestry Act 1954 (hereinafter referred to as "the Existing Licence") which confers on the Company the exclusive right to obtain pulpwood and milling timber from (inter alia) the area of land coloured green on the plan attached hereto (hereinafter referred to as "the Green Land") from the date of issue of the Existing Licence on the 8th day of February 1960 for a period of Eighty (80) years
- C. The Government of the State of Tasmania wishes to proclaim the Green Land as a State Reserve under the National Parks and Wildlife Act 1970 as amended but has not yet determined the use to be made of that land and other Crown land in the South West of Tasmania

- D. The timber on the Green Land has been taken into account by the Commission and the Company to determine the rate of annual cut by the Company throughout the duration of the Existing Licence and the right to take such timber is essential to the continued economic viability of the Company's mill at Port Huon in the said State
- E. The Company has not yet exercised its rights under the Existing Licence in respect of the Green Land
- F. The Government of the State of Tasmania has requested the company to forego its rights in respect of the Green Land under the Existing Licence granted under Act of Parliament and the Company is willing to forgo such rights in exchange for the grant of comparable rights over other land in the Hartz Mountains area coloured brown on the plan attached hereto (hereinafter referred to as "the Brown Land") on the terms set forth in this Agreement in the event that the Government determines that pulpwood and milling timber should not be taken from the Green Land
- G. The Commission has examined the relative quantities quality and accessibility of timber on the Green Land and the Brown Land and has proposed that the said exchange of rights would not prejudice the Company's existing rights notwithstanding that the quantity of timber available on the Green Land substantially exceeds that which is available on the Brown Land and the Company has acknowledged that superior quality and accessibility of timber on the Brown Land may well compensate for the lesser quantity of timber on the Brown Land as compared to that on the Green Land but considers further detailed investigation necessary before any question of reasonable comparability can be finally determined
- H. The Commission and the Company have agreed that any cost saving derived by the substitution of the Brown Land for the Green Land should be to the benefit of the Company as part compensation for surrendering rights to the greater quantity of timber on the Green Land
- I. The Government of the State of Tasmania has requested the Company and the Company has agreed not to exercise rights under the Existing Licence in respect of the Green Land until a determination has been made and the Government has secured such comparable rights over the Brown Land for the benefit of the Company as hereinbefore referred to in Recital F within the time stipulated in this Agreement

NOW IT IS HEREBY AGREED as follows:

1. PRIOR to the 1st day of October 1978 the Commission shall give notice in writing to the Company as to whether or not it is willing and able:—
 - (a) to issue to the Company a further Licence (on terms and conditions no less favourable to the Company than those contained in the Existing Licence) to take approximately 310,000 tonnes of pulpwood and approximately 120,000 tonnes of saw logs from the Brown Land (such further Licence being hereinafter referred to as "the New Licence") or, alternatively,

- (b) to vary the Existing Licence to permit the Company to take approximately 310,000 tonnes of pulpwood and approximately 120,000 tonnes of saw logs from the Brown Land on the same terms and conditions as contained in the Existing Licence

2. If the Commission prior to the 1st day of October 1978 gives notice in writing to the Company that it is willing and able to issue the New Licence or to vary the Existing Licence in the manner referred to in Clause 1 and specifies therein:—

- (a) the precise area of the Brown Land from which the Company is to be permitted to take pulpwood and saw logs
- (b) that the timber referred to in paragraph (a) hereof is reasonably comparable to that standing on the Green Land having regard to its quality quantity and accessibility
- (c) the royalties and road charges applicable which shall be no greater than those applicable under the Existing Licence and shall be reduced if necessary to ensure that the estimated cost of pulpwood and saw logs from the Brown Land to the mill door at Port Huon is no greater than the estimated cost of delivery thereof from the Green Land to the mill door at Port Huon

then the Company within one month of receipt of such notice may notify the Commission in writing that it accepts the proposed New Licence or the proposed variation of the Existing Licence as offered or that it contends that the timber on the Brown Land the subject of the proposed New Licence or the proposed variation as aforesaid of the Existing Licence is not reasonably comparable having regard to quantity quality and accessibility to that standing in the Green Land and/or that the estimated cost of delivery of such pulpwood or saw logs to the mill door at Port Huon exceeds the estimated cost of delivery thereof from the Green Land to the mill door at Port Huon after the reduction of royalties and road charges to the extent specified by the Commission as aforesaid and Clauses 3 4 and 5 hereunder shall then apply

3. If the Company shall have given a notice to the Commission in accordance with Clause 2 that it contends that the timber on the Brown Land is not reasonably comparable having regard to its quantity quality and accessibility or mill door cost then

- (a) the Company and the Commission shall endeavour to negotiate a satisfactory settlement of the Company's claims and failing agreement within a period of Two (2) months of the date of such notice sub-clause (b) hereof shall apply
- (b) failing agreement the Company and the Commission shall refer the contentions of the Company for determination to a forestry expert appointed by mutual agreement between them within one month thereafter or (failing agreement upon the appointment of a forestry expert within the time referred to) to arbitration for determination pursuant to the provisions of the Arbitration Act 1892 of the State of Tasmania and this Agreement shall be deemed to be a submission to arbitration for that purpose

4. If the determination of the forestry expert or arbitrator upholds any of the contentions the subject of the notice given by the Company in accordance with Clause 2 then:—

- (a) the Commission shall pay all costs of the Company and of the forestry expert or arbitrator incurred in connection with the determination
- (b) the Commission shall within one month thereafter
 - (i) issue to the Company the New Licence to the Brown Land specified in the notice given pursuant to Clause 2 amended to incorporate the findings of the forestry expert or arbitrator; or
 - (ii) vary the Existing Licence on the terms that it shall continue in force as heretofore subject only to the Company ceasing thenceforth to have and enjoy any rights and privileges thereunder in respect of the Green Land and in substitution therefor having and enjoying like rights and privileges (and in particular the right to take therefrom approximately 310,000 tonnes of pulpwood and approximately 120,000 tonnes of saw logs) from the Brown Land specified in the notice given by the Commission pursuant to Clause 2 amended to incorporate the findings of the forestry expert or arbitrator

PROVIDED THAT if the Commission is unable to issue the New Licence or vary the Existing Licence as hereinbefore provided to the extent required to incorporate the findings of the forestry expert or arbitrator the Company shall have the right either to accept such New Licence or variation of the Existing Licence to the extent to which the Commission may offer to issue or vary the New or Existing Licence beyond the limits of the notice given pursuant to Clause 2 hereof and the Commission shall thereupon issue or vary the New or Existing Licence accordingly or alternatively the Company shall have the right to refuse to accept such offer whereupon this Agreement shall determine and cease to have any further operation. The Commission shall notify the Company within Two (2) months of the date of the findings of the forestry expert or arbitrator of the extent to which the limits contained in the notice given pursuant to Clause 2 hereof are able to be amended and the Company shall within a further period of Two (2) months thereafter notify the Commission of which of the two above alternatives contained in this proviso the Company shall adopt

- (c) subject to sub-clause (b) hereof the Company shall simultaneously with the issue of the New Licence or variation of the Existing Licence surrender to the Commission all rights and privileges as are conferred upon it under the Existing Licence in respect of the Green Land only and the Existing Licence shall continue in force subject only to the surrender of the rights and privileges in respect of the Green Land referred to above

5. IF the determination of the forestry expert or arbitrator rejects all of the contentions the subject of the notice given by the Company in accordance with Clause 2 then:—

- (a) the Company shall pay all costs of the Commission and of the forestry expert or arbitrator incurred in connection with the determination
- (b) forthwith after the determination of the forestry expert or arbitrator referred to herein the Commission shall (as the case may require) either:—

- (i) grant and issue to the Company the New Licence limited however to the Brown Land specified in the notice given by the Commission pursuant to Clause 2

- (ii) vary the Existing Licence on the terms that it shall continue in force as heretofore subject only to the Company ceasing thenceforth to have and enjoy any rights and privileges thereunder in respect of the Green Land and in substitution therefor having and enjoying like rights and privileges (and in particular the right to take therefrom approximately 310,000 tonnes of pulpwood and approximately 120,000 tonnes of saw logs) from the part or parts of the Brown Land specified in the notice given by the Commission pursuant to Clause 2

- (c) Following the grant and issue of the New Licence or the variation of the Existing Licence in accordance with sub-clause (b) of this Clause:—

- (i) the Commission shall reduce the royalties and road charges payable by the Company to the extent specified in the notice given by the Commission pursuant to Clause 2

- (ii) the Company (if the case so requires) shall accept from the Commission such New Licence and shall surrender to the Commission all rights and privileges as are conferred upon it under the Existing Licence in respect of the Green Land only and the Existing Licence shall continue in force subject only to the surrender of the rights and privileges in respect of the Green Land referred to above; or

- (iii) the Company (if the case so requires) shall consent to the variation of the Existing Licence in accordance with subparagraph (b) (ii) of this Clause

6. THE Company covenants that it shall not exercise over the Green Land any of its rights under the Existing Licence unless

- (a) the Commission notifies the Company that it is unable to issue the New Licence or vary the Existing Licence in accordance with its notice to the Company as amended (if so required) to incorporate the findings of the forestry expert or arbitrator; or

- (b) the Company having duly complied with all its obligations under this Agreement notifies the Commission that it requires to exercise its rights over the Green Land at the expiration of such period (not being less than Six (6) months) as it may specify

7. THIS Agreement shall come into effect when the same is ratified and approved by the Parliament of the State of Tasmania but the same shall be wholly conditional upon such ratification and approval by Parliament either in its present form or with such variations and amendments as the parties hereto shall assent to in writing and in default of such ratification the same shall be wholly void and of no effect whatsoever

IN WITNESS whereof the parties hereto have hereunto executed these presents the day and year first hereinbefore written

SIGNED SEALED AND DELIVERED by the said
THE HONOURABLE WILLIAM ARTHUR } W. A. NEILSON
NEILSON in the presence of:

R. C. JENNINGS

THE COMMON SEAL of THE FORESTRY COM-
MISSION was hereunto affixed in the presence } [L.S.]
of:

P. T. UNWIN

E. K. COX

THE COMMON SEAL of AUSTRALIAN PAPER
MANUFACTURERS LIMITED was hereto affixed } [L.S.]
by authority of the Board of Directors

J. G. WILSON, Director

P. STONE Secretary

