



ANALYSIS

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1971, No. 1—*Local*

An Act to validate an agreement between the Mayor, Councillors, and Citizens of the City of Invercargill and New Zealand Aluminium Smelters Limited [16 July 1971]

WHEREAS the Mayor, Councillors, and Citizens of the City of Invercargill and New Zealand Aluminium Smelters Limited, a duly incorporated company having its registered office at 20 Brandon Street, Wellington, have executed an agreement, a copy whereof is set out in the Schedule to this Act, whereby the Corporation of the City of Invercargill has agreed to construct and maintain a ring main, a trunk main, and a reservoir, and to supply water thereby to the other party to the said agreement: And whereas the Chairman, Councillors, and Inhabitants of the County of Southland have consented to the said agreement: And whereas it is necessary to obtain legislative authority to validate and confirm the said agreement and to authorise and empower the Corporation of the City of Invercargill to carry out and perform the terms of the said agreement:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Invercargill City Aluminium Smelter Water Supply Act 1971.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Invercargill Corporation” means the Mayor, Councillors, and Citizens of the City of Invercargill:

“Water supply agreement” means the agreement dated the 17th day of April 1970, made between the Invercargill Corporation and New Zealand Aluminium Smelters Limited a duly incorporated company having its registered office at 20 Brandon Street, Wellington, a copy of which agreement is set out in the Schedule to this Act.

3. Validating water supply agreement—(1) The water supply agreement is hereby validated and confirmed, and the Invercargill Corporation shall be deemed always to have had power to enter into and execute the same, and the same is hereby declared to be and to have always been binding on the Invercargill Corporation according to the tenor thereof.

(2) The Invercargill Corporation is hereby authorised and required to carry out, perform, fulfil, and keep all the terms, conditions, and provisions set out in the water supply agreement.

4. Limiting liability of Invercargill Corporation—Notwithstanding anything in section 3 of this Act, in the water supply agreement, or in any licence granted pursuant to clause 3.04 of that agreement, the Invercargill Corporation shall not be liable for any failure to carry out its obligations under the water supply agreement or any such licence unless such failure—

- (a) Is wilful and without reasonable cause; or
 - (b) Results from the negligence of the Invercargill Corporation or of its officers or employees; or
 - (c) Is a failure of the Corporation to act expeditiously or to use its best endeavours in those cases in which it is obliged by the agreement to do so.
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SCHEDULE TO THE ACT

WATER SUPPLY AGREEMENT

THIS AGREEMENT made as of the 17th day of April 1970 BETWEEN THE MAYOR, COUNCILLORS AND CITIZENS OF THE CITY OF INVERCARGILL a municipal corporation having its office at Invercargill (hereinafter called "the Council") of the first part AND NEW ZEALAND ALUMINIUM SMELTERS LIMITED a duly incorporated company having its registered office at 20 Brandon Street, Wellington (hereinafter called "the Company") of the other part.

WHEREAS:—

(a) The Company will construct and operate an aluminium smelter (hereinafter called "the Smelter") on Tiwai Peninsula near Invercargill, which will be designed for substantial expansion.

(b) The Company will require a substantial quantity of water for the purpose of constructing and operating the Smelter and for associated purposes.

(c) There is presently limited water supply to, and no water storage at, Tiwai Peninsula and it is desirable that a reliable water supply and storage system be provided.

AND WHEREAS:—

(a) The Council already has an established treated water supply of good quality.

(b) The Council already, by agreement, acts as Water Supply Authority to serve the Borough of Bluff and industries and farmers en route.

(c) The Council is prepared to act in a similar manner to supply water beyond its boundaries to serve the Smelter and other possible consumers en route from a source originating at the Waikiwi Reservoir and pumping Station.

(d) The Council has for many years planned to improve its internal distribution system by laying a Ring Main from the Waikiwi Reservoir across the north of the City, south via Racecourse Road and Rockdale Road and thence west along Tramway Road toward Elles Road.

(e) This Ring Main is now urgently required to ensure adequate supply to the newly developing areas in the north-east and the south of the City.

(f) The Council recognises that the Company would experience severe financial loss in the event of a prolonged interruption to the water supply and is prepared to use its best endeavours to provide the Smelter with a reliable supply.

(g) *The Council* subject to obtaining the requisite approvals will raise loans as and when necessary to meet the cost of constructing the said Ring Main, Tiwai Trunk Main and Tiwai Reservoir and will subsequently construct and maintain the same and

The Company will meet the annual loan charges on its share of the Ring Main and the annual loan charges and maintenance costs of the Tiwai Trunk Main and the Tiwai Reservoir and the payment for the cost of water received all as are more particularly detailed in this agreement.

SCHEDULE TO THE ACT—*continued*WATER SUPPLY AGREEMENT—*continued*

NOW THIS DEED WITNESSETH and it is hereby agreed between the parties hereto as follows:—

1. RING MAIN AND PUMPING:

Whenever the Council so decides, it may proceed with the laying of the Ring Main (hereafter described in 1.01) around the north, east and south of the City. The Council shall supply an adequate pumping pressure at the Waikiwi Reservoir and shall design the Ring Main to have sufficient capacity to supply the requirements of the Smelter in addition to the normal requirements of City consumers.

2. TIWAI TRUNK MAIN:

Upon the written request of the Company the Council shall expeditiously proceed to design and construct the Tiwai Trunk Main (hereafter described in 2.01) from the corner of Tramway Road and Rockdale Road down by an approved route to Tiwai Reservoir (hereafter described in 3.01).

3. TIWAI RESERVOIR:

The Council shall design and construct the Tiwai Reservoir on the site described in the First Schedule hereto (hereafter called "the Reservoir site").

4. SUPPLY OF WATER:

Upon the written request of the Company the Council shall supply water to the Company through the Tiwai Trunk Main into Tiwai Reservoir.

The Company having made the said request agrees to take water at a uniform rate (as described in 4.01) and to pay for the quantity received (4.02) at an agreed basis of costing (4.03).

It is further agreed that all of those works referred to above shall be carried out by the Council in the manner and to the extent more particularly detailed as follows and that the Company will meet its obligations in accordance with the terms as follows:

1.01 The Ring Main: As part of the improvements to the Council's water reticulation system in the City of Invercargill the Council proposes to lay a large diameter high pressure water main as a trunk feeder main to boost the supply to the north eastern, eastern and south eastern suburbs. This Ring Main will be laid commencing from the pumping station at the Waikiwi Reservoir, thence to Queens Drive, Herbert Street, Racecourse Road, Rockdale Road and Tramway Road to link up with the existing 15" main in Tramway Road. The term "Ring Main" shall include all associated specials, valves, airvalves, scours, markers and covers, and other equipment or works as may be necessary.

The length of the Ring Main from the Waikiwi Reservoir to the corner of Rockdale Road and Tramway Road will be approximately 27,500 feet. The Ring Main shall be designed, purchased and completely laid by the Council or its agents when the Council determines but in any case not later than the date when it will be needed to serve the Tiwai Trunk Main.

SCHEDULE TO THE ACT—*continued*

WATER SUPPLY AGREEMENT—*continued*

1.02 Capacity of the Ring Main: The capacity of the Ring Main shall be:—

(a) the capacity calculated by the City Engineer to cover the estimated demand of the portion of the Invercargill City to be served by it and also the areas soon to be transferred from the Southland County Council to the Council; plus

(b) an additional capacity sufficient to supply the Company at a rate of 930,000 gallons of water throughout twenty hours of each day of the week.

1.03 Company Share of Cost of Ring Main: It is agreed that the size of pipe necessary to supply the Company at a rate of 930,000 gallons throughout twenty hours of each day of the week would be twelve inch diameter throughout the length of the Ring Main. The Company Share of Costs of the enlarged capacity of the Ring Main shall be the cost of purchasing and supplying to the site of the Ring Main the equivalent length of twelve inch diameter pipe of the same class and materials as used for the Ring Main as laid together with such bends, valves, and specials, and other equipment or works as may be necessary, as well as the test meter referred to in Clause 1.05, as would have been necessary had such a twelve inch pipe been laid, but not including the cost of trenching, laying, backfilling, or surface reinstatement. The cost of the twelve inch pipe shall be deemed to be the price of this size pipe as quoted on site at the same time by the suppliers of the Ring Main pipe accepted by the Council.

1.04 Council Finance for Ring Main: The Council shall finance the full cost of the Ring Main (including the Company Share of Cost of Ring Main as defined in 1.03) by way of a loan raised in accordance with the terms and conditions approved by the Local Authorities Loans Board.

1.05 Rate for Ring Main:

(a) The Company shall pay to the Council a rate, calculated and payable quarterly, equal to such of the Loan Charges (as hereinafter defined) for that quarterly period applicable to the Company Share of Cost of Ring Main as are not capitalised pursuant to Clause 3.06. The rate shall be calculated and payable from the date when the Loan Charges applicable to the Company Share of Cost of Ring Main are first incurred by the Council until whichever is the sooner of the date when the said loan (including renewals thereof or of part thereof) shall have been repaid or the date when the Company is first supplied with water through the Tiwai Trunk Main (when at such latter time the rate shall be incorporated in the cost of water as set out in Clause 4.03 (b)) provided however that if the extra capacity of the Ring Main provided for the Company is being used by the Council, the rate in respect of the quarterly period shall be reduced by an amount which bears the same proportion to the said Loan Charges for that period as the part of the extra capacity used by the Council during that period bears to the said extra capacity of the Ring Main provided for the Company.

SCHEDULE TO THE ACT—*continued*WATER SUPPLY AGREEMENT—*continued*

(b) The Company may, in intervals of not less than twelve months, request the Council to, and thereupon the Council shall, demonstrate that the extra capacity of the Ring Main provided for the Company is or is not being used by the Council. The demonstration shall be made by permitting water to flow for a period to be agreed by the parties hereto through a test meter connected to the scour outlet near the proposed or actual start (as the case may be) of the Tiwai Trunk Main. If the rate of flow through the test meter can be sustained at 780 gallons per minute with a residual pressure in the Ring Main of 39 lbs per square inch then the extra capacity hereinbefore referred to shall be deemed to be available. If the said flow and pressure are not sustained then the Council shall be deemed to be using part of the said extra capacity. If such a demonstration shows that the Council is using part of the said extra capacity of the Ring Main the parties hereto shall thereafter determine during each quarterly period for which the said rate is calculated the part of the said extra capacity being used by the Council during each such period. The cost of water consumed during the said tests shall be paid for by the parties hereto in the same proportion as the said extra capacity is being used by each party.

1.06 Definition of Loan Charges: Where in this agreement the context so permits, "Loan Charges" means:—

- (i) such underwriting fees, brokerages, loan advertising, placement fees and the like (including any management fees of the Reserve Bank of New Zealand as may be payable by the borrower) in respect of and interest payable on the Loan as are not capitalised or included in the cost of the work in respect of which the loans are authorised to be paid out of the said loans;
- (ii) periodical payments in respect of reduction of the principal of the loan whether made to the lender or by way of provision through a sinking fund or otherwise;
- (iii) such other direct charges to the borrower in respect of the loan as may be properly regarded as part of the cost of servicing the loans and which are not capitalised; and
- (iv) all of the above costs incurred in any renewal loans necessary throughout the life of the loans, until the loan is fully repaid.

2.01 Tiwai Trunk Main: The Tiwai Trunk Main is the supply main to the Tiwai Reservoir from the corner of Rockdale Road and Tramway Road. The route of the Tiwai Trunk Main shall be via Rockdale Road to Woodend, then by as near a direct line as possible to the Bluff Road in the vicinity of the Phosphate Works, and thence via Colyers Road to the start of the causeway and bridge over Awarua Bay, then over Awarua Bay on the supports provided for this purpose upon the new bridge, thence via the flank of the new road to the Tiwai Reservoir.

The Tiwai Trunk Main shall be designed, purchased, and laid by the Council or its agents and shall remain the property of the Council even though it is outside the City boundary; although the Company makes no warranty nor shall it be obliged to ensure that it shall so remain.

On receipt of the written request of the Company, the Council shall expeditiously seek Loan Authority and Finance for Tiwai Trunk Main in the manner hereinafter provided and then proceed to construct the

SCHEDULE TO THE ACT—*continued*

WATER SUPPLY AGREEMENT—*continued*

Tiwai Trunk Main to plans and specifications agreed between the Company and the Council. During construction of the Tiwai Trunk Main the Council shall keep the Company informed regularly of the progress of its construction, and shall consult with the Company as may be requisite regarding any alterations of or variations to the plans and specifications or to the method of, or arrangements for, construction of the Tiwai Trunk Main.

2.02 Loan Finance for Tiwai Trunk Main: The Council will use its best endeavours to raise the finance necessary to fully cover the Cost of the Tiwai Trunk Main by way of a loan raised in accordance with the approval of the Local Authorities Loans Board. The Company shall make such representations as may be appropriate with a view to ensuring that the raising of the said loan shall not be prejudicial to the raising of other Loan Finance by the Council to meet its normal commitments for other City works. The Council shall not be held responsible if the Loan Finance for the Tiwai Trunk Main is not forthcoming and thus causes any delay or detriment to the Company's works.

The Council shall invest at call any part or parts of the said loans which are not required for the time being to pay the cost of Tiwai Trunk Main.

2.03 Cost of Tiwai Trunk Main: The Cost of Tiwai Trunk Main means the total of the costs of:—

- (a) all survey and site investigations along the route, the securing of all easements and legal agreements;
- (b) the engineering design of Tiwai Trunk Main whether by Council staff, or by consultants at New Zealand Institution of Engineers scale charges;
- (c) the calling of tenders for the supply and delivery of all pipes, valves, and specials and the calling of tenders for the laying of Tiwai Trunk Main by contractors;
- (d) the supply, delivery, and checking of all pipes, valves, and specials;
- (e) the excavation, laying, testing, and reinstatement of the Tiwai Trunk Main by contractors;
- (f) the engineering supervision and administration charges relating to the contracts;
- (g) the maintenance, servicing, and repair of the Tiwai Trunk Main, its valves, specials, and markers, by the Council or its agents, during the first six months of operation;
- (h) such other costs and expenses as the Company and the Council may, from time to time, agree should properly be included in the Cost of the Tiwai Trunk Main; and
- (i) if authorised to be paid from loan moneys interest on and the cost of obtaining approval for the purpose of and applied in payment of the foregoing items (a) to (h) (both inclusive) and incurred or accrued to the date of completion of the Tiwai Trunk Main less any interest received by the Council from temporary investment of any part or parts of the said loan as provided in Clause 2.02.

SCHEDULE TO THE ACT—continued**WATER SUPPLY AGREEMENT—continued**

As soon as practicable after completion of the Tiwai Trunk Main the Council shall calculate the Cost and shall render a statement thereof in reasonable detail to the Company. The Company within thirty days after receipt of the said statement may make such comments as it sees fit. The Council shall consider the comments and shall render to the Company a final statement for the Cost of Tiwai Trunk Main. The statement first hereinbefore referred to shall be final and binding on the parties hereto if no comment is made by the Company within the said period otherwise the final statement shall, unless otherwise agreed, conclusively establish the Cost of Tiwai Trunk Main.

The Company shall pay to the Council a quarterly rate equal to such of the quarterly Loan Charges as are not capitalised pursuant to Clause 3.06 from the date when they are first incurred by the Council until such time as the Company is first supplied with water through Tiwai Trunk Main. Thereafter the Loan Charges are included in the price of water under Clause 4.03 (b).

2.04 Maintenance: The Council shall keep an account of all costs involved in the regular servicing, maintenance, repairs, or replacement of the Tiwai Trunk Main.

2.05 Other Consumers: The Council shall consult with, and consider fully representations made by the Company before making or allowing connections to the Tiwai Trunk Main to supply water to other consumers. The Council shall ensure that the Company's water requirements are supplied in full by the Council in priority over other consumers who may, from time to time, be supplied with water by the Council from the Tiwai Trunk Main.

In the event that the average total daily consumption in any quarter of all such consumers exceeds 5% of the total daily capacity of the Tiwai Trunk Main, the Council shall charge all such consumers in addition to the payment for the water received an amount per thousand gallons to cover a reasonable share of the loan and maintenance charges on the Tiwai Trunk Main and Loan Charges on the Ring Main as payable by the Company under this agreement.

3.01 Tiwai Reservoir: When requested in writing by the Company, the Council, through its own staff, agents, or consultants shall design and construct a reinforced concrete reservoir (in this Agreement called "Tiwai Reservoir") of two million (2,000,000) gallons capacity upon the Reservoir Site.

The general principles of the design and construction and the layout of the pipework and valves shall be as agreed between the Engineering Manager of the Company and the City Engineer.

The Council shall purchase the freehold of the Reservoir Site from the Commissioner of Crown Lands, call tenders for, let, and supervise a contract for the construction and testing of Tiwai Reservoir, together with all associated piping, valves, meters, or other equipment as may be necessary.

During construction of the Tiwai Reservoir, the Council shall keep the Company informed regularly of the progress of its construction and shall consult with the Company as may be requisite regarding any

SCHEDULE TO THE ACT—*continued*

WATER SUPPLY AGREEMENT—*continued*

alterations of or variations to the method of, or arrangements for, construction of the Tiwai Reservoir.

3.02 Loan Finance for Tiwai Reservoir: The Council will use its best endeavours to raise the finance necessary to cover the Cost of the Tiwai Reservoir by way of a loan raised in accordance with the approval of the Local Authorities Loans Board. The Company shall make such representations as may be appropriate with a view to ensuring that the raising of this loan shall not be prejudicial to the raising of other Loan Finance by the Council to meet its normal commitments for other City works. The Council shall not be held responsible if the Loan Finance for Tiwai Reservoir is not forthcoming and thus causes any delay or detriment to the Company's works.

The Council shall invest at call any part or parts of the said Loan which are not required for the time being to pay the cost of Tiwai Reservoir.

3.03 Cost of Tiwai Reservoir: The Cost of Tiwai Reservoir means the total of the costs of:—

- (i) site investigations and obtaining a legal estate or interest in the Reservoir Site on which Tiwai Reservoir is to be constructed;
- (ii) engineering, design, and consulting services which are provided by, or arranged by, the Council in connection with the construction of the Tiwai Reservoir, and associated piping, valves, meters, and other specials;
- (iii) the Council's administration of the construction of the Tiwai Reservoir;
- (iv) the net amount paid to suppliers, contractors, consultants, and others directly related to the construction of the Tiwai Reservoir;
- (v) such other costs and expenses as the Company and the Council may from time to time agree should properly be included in the Cost of Tiwai Reservoir; and
- (vi) if authorised to be paid from loan moneys interest on and the cost of obtaining approval for and raising loans (including underwriting fees, brokerages, loan advertising, placement fees,) for the purpose of and applied in the payment of the foregoing items (i) to (v) (both inclusive) and incurred or accrued to the date of completion of Tiwai Reservoir less any interest received by the Council from temporary investment of any part or parts of the said Loan as provided in Clause 3.02.
- (vii) the Council's legal costs and disbursements relating to the preparation of this Agreement.

As soon as practicable after completion the Council shall calculate the Cost of Tiwai Reservoir and shall render a statement thereof in reasonable detail to the Company. The Company within thirty days after the receipt of the said statement may make such comments thereon as it sees fit. The Council shall consider the comments and shall render to the Company a final statement of the Cost of Tiwai Reservoir. The statement first hereinbefore referred to shall be final and binding on the parties hereto if no comment is made by the Company within the said

SCHEDULE TO THE ACT—*continued*WATER SUPPLY AGREEMENT—*continued*

period, otherwise the said final statement shall, unless otherwise agreed, conclusively establish the Cost of Tiwai Reservoir.

3.04 License: As soon as possible after completion of the Tiwai Reservoir the Council shall license to the Company the use of the Tiwai Reservoir by instrument of licence, in the form, at the licence fee (which includes the Loan Charges) and upon the terms and conditions set out in the First Schedule hereto. The term of the said licence shall commence from the date construction of the Tiwai Reservoir has been completed or such earlier date as the Tiwai Reservoir is accepted by the Company for storage of water.

Until commencement of the term of the licence as aforesaid the Council, as far as is consistent with the stage of construction, and with contracts in relation to its construction, license the Company to install and connect water mains from the Tiwai Reservoir to the Smelter, and from the Company's water bores on Tiwai Peninsula to the Tiwai Reservoir, as well as install a chlorine injection system for bore water.

3.05 Purchase of Tiwai Reservoir: If the Company has not within a period of five years after the commencement of the term of the said licence given notice pursuant to Clause 2.01 requesting that the Council lay the Tiwai Trunk Main then the Company shall at the expiry of the said period purchase from the Council the Tiwai Reservoir together with the whole of the Council's estate or interest in the Reservoir Site for an amount equal to the Cost of the Tiwai Reservoir as defined in Clause 3.03 less the total of all periodical payments or provisions made in respect of the reduction of the principal of all loans raised to pay the Cost of Tiwai Reservoir. The purchase shall be made in cash in one payment within sixty days after an audited statement of the amount payable is given to the Company.

In the event of the Company wishing to purchase Tiwai Reservoir at any time, and the Council being willing to sell, then the above terms shall apply unless agreed otherwise.

3.06 Loans Generally: When the Council applies to the Local Authorities Loans Board for approval to raise loans required to cover the Cost of Ring Main, Cost of Tiwai Trunk Main, and Cost of Tiwai Reservoir it shall use its best endeavours to obtain the approval of the Board to the raising of the loans on terms which will provide for the repayment of the whole of the principal and interest thereon over a period of not less than twenty years, and to the payment from the proceeds of the Loan of:—

- (i) underwriting, brokerage, and placement fees;
- (ii) Loan advertising expenses;
- (iii) Holding fees and Reserve Bank fees, charges, and interest; and
- (iv) interest on loans incurred and accrued during construction.

Any payments so approved shall be capitalised and shall form part of the cost of the relevant facility for the purpose of this Agreement.

3.07 Loan for Tiwai Reservoir: In addition to the foregoing the Council in applying to the Local Authorities Loans Board for the loan for the Tiwai Reservoir shall request that it be on the additional con-

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WATER SUPPLY AGREEMENT—*continued*

dition that the Council pays only interest thereon to a date being not earlier than the 31st day of March 1971.

4.01 Supply of Water to Company: When requested by the Company in writing and after completion of the Tiwai Trunk Main the Council shall supply water into the Tiwai Reservoir. Such water shall be supplied at as uniform a rate of flow as possible throughout twenty hours of each day of the week. The Company will use its best endeavour to avoid unnecessary surges in demand for supply of water from the Council. Variation in the rate of demand for water from the Council will bear approximately the same relationship to average demand from the Council as the actual Smelter demand from the Tiwai Reservoir bears to the average demand from the Tiwai Reservoir. Only in the case of fire, breakdown of supply or other emergency shall the Company draw the water storage in Tiwai Reservoir down below 500,000 gallons.

4.02 Measurement of Flow:

(a) On or before completion of construction of the Tiwai Trunk Main the Council shall install a metering system (hereinafter called "the Council water meter") having a high operating accuracy at or near the point where the Tiwai Trunk Main connects with Tiwai Reservoir to measure the quantity of water from time to time supplied by the Council through the Tiwai Trunk Main to Tiwai Reservoir. The quantity of water as supplied to the Tiwai Reservoir shall be deemed to be supplied to the Company. This metering system shall consist of a conventional integrating meter as the main measure of the flow. In addition there shall be installed a differential flow device operating from manometric tappings to be used to check the flow through the integrating meter.

(b) The Company shall be permitted by the Council at any time at the Company's cost to install a water metering system or device (hereinafter called "the Company water meter") in close proximity to the Council water meter. The Company water meter shall be used for the sole purpose of checking the operating accuracy of the Council water meter.

(c) The meters shall be maintained in good repair and working order by their respective owners and shall at all reasonable times be open for inspection and for required testing by authorised officers of the Council and the Company.

(d) The said meters shall be read on the dates of their respective installation and thereafter on the last working day of each calendar month by an authorised and competent officer of the Council who shall certify after each reading the quantity of water supplied to the Company since the prior readings.

(e) A responsible officer or representative of the Company shall be entitled to be present at all readings of the meters and may make check readings. The Council shall give the Company reasonable notice of the time when the meters will be read.

(f) If at any time the quantity of water recorded by the Council water meter is not within 5% of the quantity of water recorded

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by the Company water meter (if such meter is installed) then the meters shall be deemed to be registering in error and the Council shall forthwith have both meters tested by a competent Engineer appointed by the Council after consultation with the Company. If the Council meter is found to be accurate within 5% when tested, the cost of such testing shall be paid by the Company.

(g) Should the Company not install a check water meter it may request the Council at intervals of not less than 3 months to check its integrating meter against the differential meter for the purpose of establishing the accuracy of the integrating meter. The Council shall carry out such check within 5 working days after the date of such request.

(h) If at any time the said meters are found to be registering in error as aforesaid then the fault shall be deemed to have arisen immediately after the last regular monthly meter reading made prior to the date on which the meters were found to be registering in error, or from such later date as they may have been checked as both reading without error.

(i) If the error or fault affects the measurement or calculation of water supplied to the Company during the period from the date on which the fault is deemed to have arisen until the fault is cured and the meters are recording accurately then the quantity of water deemed to be supplied to the Company by the Council shall be calculated on the basis of the average monthly quantity of water supplied to the Company during the three months immediately preceding the date on which the fault is deemed to have arisen.

(j) In addition to any tests made pursuant to paragraph (f) of this clause the meters shall be tested for accuracy at least once in every financial year by a competent Engineer appointed by the Council after consultation with the Company and shall be adjusted or repaired as may be necessary as a result of those tests.

(k) The said Engineer shall be instructed to give each party hereto a copy of his report and the results of the said tests.

4.03 Basis of Charging for Water:

(a) The Council shall calculate in accordance with established accounting principles the cost per thousand gallons to the Council of all water supplied by the Council to all its consumers (including the Company) during each financial year. The calculations shall be taken from the Council's Annual Statement of Accounts covering the accounts for the supply section only of the Water Department. This excludes the cost of the internal city reticulation network but does not exclude the Ring Main. The items more specifically covered under Supply include:

(i) *Loan Charges:* Loan charges upon all present and future capital expenditure directly involved in the supply, including that at:—

- the intakes,
- the Treatment Plant,
- the Pumping Station at Branhholme,

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WATER SUPPLY AGREEMENT—*continued*

- the Trunk Pipe Line and any future duplication of it between the Branxholme works and the City Reservoirs,
- the City Reservoirs and any future City Reservoirs,
- the Pumping Stations at the Reservoirs.

(ii) *Operating Costs:* Operating costs as set out in the Council's Annual Statement of Accounts including a fair proportion of administration and supervision salaries and office charges.

The sum of the Loan Charges and the Operating Costs will be multiplied by 1,000 and divided by the total number of gallons of water delivered out of the Branxholme Pumping Station annually, thus giving a figure to be known as the "Council's Unit Cost" per 1,000 gallons of water.

(b) The price payable by the Company to the Council for water supplied to it through Tiwai Trunk Main during each quarterly period shall be calculated in accordance with the formula:—

$$\left(\frac{A}{1,000} \times B \right) + C + D - E$$

Where:

- A — is the number of gallons of water supplied by the Council to the Company through Tiwai Trunk Main during that quarterly period;
- B — is the Council's Unit Cost per 1,000 gallons calculated as aforesaid;
- C — is the Rate for Ring Main calculated in accordance with the provisions of Clause 1.05 hereof;
- D — is the Cost of Maintenance and operation of Tiwai Trunk Main during that quarterly period plus the Loan Charges during that period in respect of loans raised by the Council and applied in payment of the Cost of Tiwai Trunk Main;
- E — is the total of all loan and maintenance charges received by the Council from other consumers during that quarterly period pursuant to Clause 2.05 (if any).

(c) As soon as possible after the end of each quarterly period the Council shall render to the Company a preliminary statement of the amount payable by the Company for water supplied to it by the Council during that quarterly period calculated pursuant to paragraph (b) of this Clause, but by making an estimate of "B" (being the Council's Unit Cost per 1,000 gallons) based on the Council's approved Annual Estimate of Expenditure for, and an estimate of the quantity of water to be delivered out of Branxholme Pumping Station during the Council's financial year in which the relevant quarterly period falls. Within 14 days after receipt of the preliminary statement the Company shall pay the amount shown thereon. If the Company does not pay the said amount within the aforesaid 14 days then all payments in arrear shall forthwith incur interest which shall accrue from the due date at a rate of 2% above the approved maximum interest rate payable for Local Authority loans. In the event of any error or

SCHEDULE TO THE ACT—*continued*WATER SUPPLY AGREEMENT—*continued*

discrepancy being discovered in any statement then, unless otherwise agreed, an appropriate adjustment shall be made in the next statement.

(d) As soon as possible after the end of each financial year of the Council, the Council shall give to the Company an audited statement showing the factors in and calculation of the Council's Unit Cost per 1,000 gallons of water for that financial year together with a final statement for that financial year showing the adjustments to be made to the preliminary statements rendered in respect of the quarterly periods of that financial year as a result of the adoption of final figures in lieu of the estimate made for the factor "B" in the formula for calculating the price of water. The said adjustments shall be made by debits or credits (as the case may be) to the next quarterly preliminary statement rendered to the Company.

4.04 Failure to Supply: In the event of a breakdown in the supply of water to the Tiwai Reservoir the Council will immediately notify the Company and will take all steps possible to restore the supply as quickly as possible. If the failure is due to a breakdown in the supply to the City so that the City supply has to be conserved the Council may shut off the supply to the Tiwai Trunk Main for a period not exceeding 18 hours. During this period the Company will conserve its own storage and will use any auxiliary supply available to it. After the initial 18-hour period if the full supply is not restored, then the Council will supply Water to the Tiwai Reservoir at such rate as may in the opinion of the City Engineer be reasonable having regard to all the circumstances. The Council shall not restrict or prohibit the use of water supplied pursuant to this Agreement except as is herein provided.

The Council shall not be held liable for any claim by the Company as a result of any such interruptions to the supply of water to the Company.

4.05 Supply to Others: The Company may supply water from Tiwai Reservoir to the Southland Harbour Board for its operations on Tiwai Peninsula as well as ships berthing at Tiwai Wharf, contractors and others on Tiwai Peninsula engaged in the construction, expansion, or repair of the Smelter and its associated facilities and works, and to any industry or operation established on Tiwai Peninsula by Comalco Industries Pty Limited and any of its subsidiary companies, provided always however that such water shall be supplied by the Company at cost to it.

4.06 Other Rates, Fees and Charges: No other rates, fees, or charges (however the same may be termed in future Council by-laws) other than those agreed between the parties hereto will be charged against the Company in so far as they apply to the supply of water to the Company.

5.01 Term of Agreement: The term of this Agreement shall be for a period from the date of this Agreement until the last of all the loans raised to meet the cost of the Ring Main, the Tiwai Trunk Main, and the Tiwai Reservoir, and all renewals of or replacements for those loans

SCHEDULE TO THE ACT—*continued*

WATER SUPPLY AGREEMENT—*continued*

or any of them have been fully repaid. It is the intention of the parties that Section 248 (4) of the Municipal Corporations Act 1954 shall not apply to this Agreement.

5.02 Provision for Extension or Review of Agreement: In the event of the Company wishing to draw more than 930,000 gallons throughout twenty hours of each day or more than can be supplied in the Ring Main or Tiwai Trunk Main, or needing more storage than is provided by the Tiwai Reservoir, then this Agreement may be amended or extended as agreed to by both parties. Throughout the currency of this Agreement or any extension of it either party may, on the giving of three months' written notice, request that the terms of the Agreement be reviewed or revised subject to the request being made not more frequently by either party than at three-yearly intervals, dating from the date of the Agreement. The parties shall consult in good faith to consider the request.

5.03 Precedence: In the event of any conflict or inconsistency between the terms and conditions contained herein or the expressed or implied intention of the parties set out in the recitals herein on the one part and Council by-laws on the other part, the terms, conditions, and recitals contained in this Agreement shall at all times be paramount.

5.04 Legislation: Where any matters, things, conditions, or agreements contained in this Agreement are outside the existing powers of the Council, or in the opinion of the Council or the Company would require validation, the Council shall use its best endeavours to have them validated by appropriate legislation and they shall be conditional upon such validation being obtained. Failure to secure the approval of the Local Authorities Loans Board to the raising of any of the said loans or failure by the Council to raise the necessary finance shall not render the Council liable for any claims for damages for failure to carry out the terms of the Agreement.

5.05 Insurance: Unless the Company requests it the Council will not take out insurance, either fire or earthquake, on the Ring Main, Tiwai Trunk Main, or the Tiwai Reservoir. The cost of any such insurance shall be included in the costs which go to make up the price of water supplied to the Company.

6.01 Arbitration: In case of any difference or dispute arising as to any clause matter or thing herein contained or implied or as to the construction hereof or arising in any way in respect of this agreement such difference or dispute shall be decided by an arbitrator if the parties can agree upon the appointment of one person or failing agreement to be nominated on the application of either party by the President for the time being of the New Zealand Institution of Engineers and such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1908 or any statutory re-enactment or amendment thereof for the time being in force.

SCHEDULE TO THE ACT—*continued*WATER SUPPLY AGREEMENT—*continued*

6.02 Notices:

(a) All notices, requests, consents, statements, and other communications (other than day to day communications between the parties) and all of which are hereinafter referred to as "communications" shall be in writing.

(b) The communications, without prejudice to any other proper mode of service or giving, shall be properly served or given:—

(i) To the Council if posted by the fastest means (other than express rate) by prepaid post to the Council at such address as the Council may, from time to time, notify the Company or if the Council fails to notify an address to the Company then at the following address:—

The Town Clerk,
Invercargill City Council,
P.O. Box 906,
Invercargill.

(ii) To the Company, if posted by the fastest means (other than express rate) by prepaid post to the Company at such address as the Company may, from time to time, notify the Council or if the Company fails to notify an address to the Council then at the following address:—

New Zealand Aluminium Smelters Limited,
P.O. Box 1308,
Invercargill.

(c) Communications, if posted as aforesaid, shall be deemed to have been received by the addressee in the ordinary course of post.

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

The Common Seal of THE MAYOR, COUN-
CILLORS AND CITIZENS OF THE CITY
OF INVERCARGILL was hereunto affixed in
the presence of:

L/S

N. L. WATSON, Mayor.
L. A. BEST, Town Clerk.

The Official Seal of New Zealand Aluminium
Smelters Limited for use in Victoria was hereto
affixed—

L/S

We, the undersigned, Sydney Christie, and Neil
R. Caffin, both of 95 Collins Street, Melbourne,
Victoria, certify that the said Official Seal was
affixed hereto on the 17th day of April, 1970, at
Melbourne, Victoria.

S. CHRISTIE, Director.
N. R. CAFFIN, Secretary.

SCHEDULE TO THE ACT—*continued*

WATER SUPPLY AGREEMENT—*continued*

FIRST SCHEDULE TO THE AGREEMENT

THIS DEED made the _____ day of _____ of BETWEEN the MAYOR, COUNCILLORS AND CITIZENS OF THE CITY OF INVERCARGILL being a Municipal Corporation having its office at Invercargill (hereinafter called "The Licensor") of the one part AND NEW ZEALAND ALUMINIUM SMELTERS LIMITED a duly incorporated Company having its registered office at 20 Brandon Street, Wellington (hereinafter called "The Licensee") of the other part WHEREBY it is agreed and declared by and between the parties hereto as follows:—

1. In this Deed where the context so permits,

(a) "General Agreement" means the Agreement made between the Licensor and the Licensee and dated the _____ day of _____ 1970 relating to the supply of water by the Licensor to the Licensee.

"Licence fee" in relation to a Rental Period means an amount equal to the cost of maintenance and operation of the Tiwai Reservoir expended in that Rental Period plus the Loan Charges in respect of that Rental Period of the loans raised by the Council and applied in payment of the Cost of Tiwai Reservoir.

"Rental Period" means:—

(i) in respect of the first rental period the period from the commencement of the term of this licence until the last day of March or the last day of June, September or December first occurring after the said commencement; and

(ii) in respect of subsequent rental periods each successive period of three months ending on the last day of March, June, September or December; and

(b) the words and expressions "Cost of Tiwai Reservoir", "Loan Charges", "Reservoir Site", "Smelter" and "Tiwai Reservoir" shall have the same meanings (*mutatis mutandis*) as are respectively assigned to them in the General Agreement.

(c) "Reservoir Site" means all that piece of land containing 1.7 acres more or less with South-western boundary corner located at North 5364.9 feet and East 12369.6 feet on the Southland District Circuit Grid.

2. (a) The Licensor hereby grants to the Licensee a licence for the exclusive use of the Tiwai Reservoir and Reservoir Site for a term of thirty-five years from the _____ day of _____ 197 _____ at the licence fee in respect of each Rental Period.

(b) The said Licence fee shall be calculated by the Licensor at or near the end of each Rental Period and the Licensor shall render to the Licensee an account for each said Licence fee with reasonable details of its calculation. The Licensee shall pay the amount shown in the said account on whichever is the later of the expiration of fourteen days after receipt by the Licensee of the said account or within fourteen days after the end of the rental period in respect of

SCHEDULE TO THE ACT—*continued*WATER SUPPLY AGREEMENT—*continued*FIRST SCHEDULE TO THE AGREEMENT—*continued*

which the account is rendered. In the event of any error being discovered in any said account an appropriate adjustment shall be made in the next account to be rendered.

3. The Licensor shall be responsible for the operation and maintenance of the Tiwai Reservoir and shall expeditiously carry out repairs, replacements and services to Tiwai Reservoir as are required to keep it in good and substantial repair and operating condition.

4. The Licensee shall be entitled to install and connect water mains between the Tiwai Reservoir and the Smelter and between the Tiwai Reservoir and the Company's water bores on Tiwai Peninsula as well as install a chlorine injection system for bore water and at all times to fill Tiwai Reservoir wholly or partly with water from the Company's water bores, and to draw water from the Reservoir free of cost (except as otherwise provided in the General Agreement).

5. The Licensee paying the Licence fee hereby reserved and performing and observing all the covenants on the part of the Licensee to be performed and observed the Licensee shall quietly hold and enjoy the licenced premises during the said term without any interruption or disturbance by the Licensor.

6. If and whenever the licence fee hereunder or any part thereof shall be in arrears or unpaid for the space of thirty days next after the days hereinbefore appointed for payment thereof whether the same shall have been demanded or not (unless the account referred to in paragraph 1(b) hereof was not actually received by the Licensee) or if the Licensee has made default in the observance or performance of any of its obligations hereunder and has not cured that default within sixty days (or such longer period as may be reasonable having regard to the nature of the default) after the Licensor has given it notice specifying the default and requiring its remedy then and in such case it shall be lawful for the Licensor forthwith without suit, demand or further notice to enter upon the premises hereby licensed in the name of the whole and determine this licence but without discharging the Licensee from liability for the licence fee due or accruing due or for any breach of the covenants, conditions and provisions herein contained or implied.

7. That if the Licensee shall during the term hereby granted pay the rent hereby reserved and observe and perform the covenants and conditions on the part of the Licensee herein contained and implied up to the expiration of the said term and shall have given notice in writing to the Licensor before the expiration of the said term of its desire to take a renewed licence of the Water Reservoir then the Licensor will at the cost of the Licensee grant to the Licensee a renewed licence of the Water Reservoir for a further term of thirty-five years at a licence fee calculated on the same basis and upon and subject to the same covenants and conditions as are herein contained and implied except this present covenant for renewal.

SCHEDULE TO THE ACT—*continued*

WATER SUPPLY AGREEMENT—*continued*

FIRST SCHEDULE TO THE AGREEMENT—*continued*

8. In case of any difference or dispute arising as to any clause matter or thing herein contained or implied or as the construction hereof or arising in any way in respect of this Deed such difference or dispute shall be decided by an arbitrator if the parties can agree upon the appointment of one person or failing agreement to be nominated on the application of either party by the President for the time being of the New Zealand Institution of Engineers and such reference shall be deemed to be a submission or arbitration within the meaning of the Arbitration Act 1908 or any statutory re-enactment or amendment thereof for the time being in force.

IN WITNESS WHEREOF this Deed has been executed by the parties hereto the day and year first hereinbefore written.

THE CHAIRMAN COUNCILLORS AND INHABITANTS OF THE COUNTY OF SOUTHLAND HEREBY CONSENT pursuant to Section 248 (1) of The Municipal Corporations Act 1954 to the within written Agreement.

DATED this 22nd day of May 1970.

THE COMMON SEAL of THE CHAIRMAN
COUNCILLORS AND INHABITANTS OF
THE COUNTY OF SOUTHLAND was here-
unto affixed in the presence of:

L/S

WM. BAIRD, Chairman.
A. J. DRAGE, County Clerk.
