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**ELIZABETHAE II REGINAE**

A.D. 1958.

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**No. 54 of 1958.**

An Act to approve and ratify an Agreement made between the State of South Australia the District Council of Millicent and the companies known respectively as Apcel Limited and Cellulose Australia Limited, and to provide for carrying the Agreement into effect and for purposes incidental thereto.

[Assented to 27th November, 1958.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

- Short title.**        1. This Act may be cited as the "Pulp and Paper Mills Agreement Act, 1958".
- Commence-  
ment.**            2. This Act shall come into operation on a day to be fixed by the Governor by proclamation.
- Interpretation.**    3. (1) In this Act unless the context otherwise requires:—  
                           "the agreement" means the agreement set out in the schedule to this Act ;  
                           "Apcel Limited" means the company incorporated in South Australia under that name, having its registered office at the time of the passing of this Act at Pharmacy Building, Gawler Place, Adelaide ;

“Cellulose Australia Limited” means the company incorporated in South Australia under that name, having its registered office at the time of the passing of this Act at Pharmacy Building, Gawler Place, Adelaide ;

“drain” means drain under the control and management of the district council of Millicent ;

“Snuggery drain” means the system of drains comprising main drain No. 56 and drains 56A 56B 56C 56D 56E and 56F situated in the Hundreds of Mayurra and Hindmarsh.

4. The agreement is hereby ratified and approved and shall, notwithstanding any other Act or law, be carried out and take effect as though the provisions thereof had been expressly enacted in this Act. Validation of Agreement.

5. Neither Apcel Limited nor Cellulose Australia Limited nor any other person or authority shall be liable for the discharge by either of those companies of effluent from its mills into a drain in accordance with the agreement or for the flow of such effluent from a drain directly or indirectly into any other drain or into Lake Bonney or the sea or for any consequences of such discharge or flow. Discharge of effluent.

6. (1) A person shall not discharge into Snuggery Drain at any place above the weir constructed in the vicinity of the mill of Cellulose Australia Limited any matter whether liquid or solid which will affect the purity of the water in the drain. Discharging matter into Snuggery Drain.

(2) A person who contravenes this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding one hundred pounds.

7. (1) Notwithstanding any other Act or law the State may under the name of “The State of South Australia”— Legal proceedings.

(a) sue and be sued and be a party to legal proceedings in connection with any matter arising out of this Act or the Agreement ;

(b) agree with Apcel Limited or Cellulose Australia Limited to submit any dispute or difference between the State and such Company arising out of or relating to the Agreement to arbitration under the laws relating to arbitration for the time being in force in the State ;

(c) be a party to any such arbitration.

(2) In any legal proceedings or arbitration to which the State is a party under subsection (1) of this section the practice and procedure and the rights of the parties shall as nearly as possible be the same and judgment may be given or an award may be made and costs awarded on either side as in legal proceedings or an arbitration between subject and subject.

(3) The Treasurer shall out of money provided by Parliament for the purpose, satisfy any award order or judgment for the payment of money made or given against the State in any such proceedings or arbitration.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

R. A. GEORGE, Governor.

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THE SCHEDULE.

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THIS AGREEMENT made the 17th day of October 1958 BETWEEN THE STATE OF SOUTH AUSTRALIA (hereinafter called "the State") of the first part THE DISTRICT COUNCIL OF MILLICENT in the State of South Australia (hereinafter called "the Council") of the second part APCEL LIMITED a Company duly incorporated in the State of South Australia and having its registered office at Pharmacy Building Gawler Place Adelaide in the State of South Australia (hereinafter called "Apcel") of the third part and CELLULOSE AUSTRALIA LIMITED a Company duly incorporated in the State of South Australia and having its registered office at Pharmacy Building Gawler Place Adelaide aforesaid (hereinafter called "Cellulose") of the fourth part :

WHEREAS—

A.—Apcel a company owned jointly by Australian Paper Manufacturers Limited and Cellulose proposes to erect wood pulp and paper mills at Snuggery near Millicent within the district of the Council :

B.—The State and the Council desire to encourage the wood pulp and paper industry and to assist Apcel in the establishment of the proposed mills :

C.—Cellulose has already established mills for the manufacture of pulp cellulose papers cardboards building boards insulating boards and other articles of a like nature on part Section 78 Hundred of Mayurra within the district of the Council and adjoining a certain main drain No. 56 :

D.—Cellulose has by virtue of an indenture made the 11th day of March 1939 between the Council and Australasian Cellulose Manufacturers Limited and a Supplementary Indenture made the 7th day of November 1939 between the Council and Cellulose for the period mentioned in such indentures rights to draw water from the Snuggery Drain (as therein defined) and to discharge into the said drain from its said mills waters which do not contain poisonous chemicals or other poisonous matter or any filthy or unwholesome matter or any substances or matter (fluid or solid) which shall prejudicially affect the use of the water in the said drain for stock pasture or agricultural purposes or which shall be or cause a nuisance to any person. The said Indenture and the full

benefit thereof and all rights thereunder of the said Australasian Cellulose Manufacturers Limited vested in Cellulose by virtue of the provisions of an indenture made the 14th day of April 1939 between Cellulose and Australasian Cellulose Manufacturers Limited. In order to enable it to draw water from the Snuggery drain in exercise of its rights to do so Cellulose has established and maintains a weir in the said drain at the point shown in the plan annexed hereto :

E.—Apcel cannot proceed with its said proposals unless it can secure a suitable means of disposal of effluent from its proposed mills and obtain an adequate supply of water :

F.—Such effluent is expected to exceed in quantity a million gallons a day and will contain dissolved and suspended solids both organic and inorganic and will have a high biochemical oxygen demand a dark colour and a smell but will not be disease bearing :

G.—Apcel is desirous of having the right to discharge the said effluent into drain 56 below the weir and into drain 57 and has requested the State to grant to it by legislation immunity from the consequences of such discharge :

H.—Apcel is also desirous of having the right to draw off underground water, and to draw water from the Snuggery Drain not required by Cellulose and the further right to draw water from drains 56D and 57 and to use all such water in its said mills :

I.—The water in all the said drains and in Lake Bonney is the property of the Crown and the care control and management of the said drains is vested in the Council :

J.—The State in consideration of Apcel's proposal to establish the said mills has agreed to introduce legislation to approve and ratify this Agreement and provide for carrying it into effect :

K.—Cellulose cannot carry on the manufacture of its products without an adequate supply of water and its mills are established and designed on the basis that such supply will be available from the Snuggery Drain. In consideration of its purpose to expand and enlarge (as circumstances permit) the industry it has established Cellulose desires to be assured of a permanent supply of water for the purposes of manufacturing its products. Cellulose further desires to be in a position to increase the range of articles manufactured by it and for this purpose to introduce

(if necessary) new or different manufacturing processes which may involve problems of the disposal of effluent of a similar type to that which Apcel desires to dispose of. Cellulose has accordingly requested the State to grant to it a permanent right to draw water from the Snuggery Drain and to draw off underground water for the purpose of its industry and to maintain in that drain the weir above referred to and also to grant to it similar rights and immunities in respect of its said mills and the effluent therefrom as those sought by Apcel and the State and the Council have agreed to such request :

L.—The State is willing on the terms set out in this Agreement to construct and maintain in effective working order all such works as may from time to time be necessary to provide for and ensure the proper disposal of effluent from the mills of Apcel and Cellulose which flows into Lake Bonney from any drains in accordance with the provisions of this Agreement :

M.—The State and the Council are willing, in the exercise of any powers conferred on them by law to grant or cause to be granted to Apcel and Cellulose any licences or other authorities to sink bores or wells or to draw off underground water or to construct or erect any works for such purpose which may from time to time be required by these Companies under any Act bylaw or regulation for the time being in force :

N.—The positions of the Cellulose mills proposed Apcel mills Snuggery Drain and other drains, effluent pipe line, the weir and the Princes Highway and the bridge over the Snuggery Drain are more particularly shown in the plan annexed hereto :

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS :—

1. (1) The provisions of this Agreement other than this clause shall not come into operation unless the Parliament of the State passes a Bill to ratify this Agreement. Ratification  
and operation  
of this  
Agreement.

(2) If such a Bill is passed Clauses 2 to 13 (inclusive) of this Agreement shall, on the day when the Bill comes into operation as an Act, come into operation and be binding on the parties hereto.

2. (1) In this Agreement unless the context otherwise requires— Interpretation.

“Snuggery Drain” means the system of drains comprising main drain No. 56 and drains 56A 56B 56C 56D 56E and 56F situated in the Hundreds of Mayurra and Hindmarsh.

“the weir” means the weir in Snuggery Drain marked on the plan annexed hereto

(2) In this Agreement the word “drain” followed by a number means the drain bearing that number which is under the control and management of the district council of Millicent.

Establishment  
of Apcel's  
Mills.

3. Apcel will establish at Snuggery near Millicent wood pulp and paper mills.

Rights of  
Apcel.

4. (1) Subject to subclauses (2) and (3) of this clause the State and the Council hereby grant to Apcel the following rights and powers namely :—

(a) the right to discharge all effluent from the said mills into the Snuggery drain at any point below the weir and into drain 57 at a point where that drain abuts on land owned by Apcel and situated in Part section 19 Hundred of Mayurra, and to cause such effluent to flow into Lake Bonney through drains 54, 52, 49 and 48 ;

(b) the right to lay, maintain, repair and replace, on or under any road such pipes as Apcel considers necessary, leading from the said mills to the Snuggery drain at any point below the weir and/or to drain 57 for the purpose of conveying effluent into those drains ;

(c) the right to lay, maintain, repair and replace on or under any road or any land vested in the Crown or the Council, such pipes to convey water to its said mills and such electrical powerlines as Apcel considers necessary ;

(d) the right to take from drains 56D and 57 such water as Apcel requires for the manufactures carried on or to be carried on in the said mills and the further right to take from the Snuggery Drain such water for use in its mills as is not required by Cellulose and passes the inner top edge of the weir ;

(e) the right to execute do and perform on any road or on any land vested in the Crown or the Council all such works acts and operations as are incidental to those mentioned in the preceding paragraphs.

(2) Before exercising any powers conferred by paragraph (b) (c) or (e) of subclause (1) of this clause, Apcel will give reasonable notice of the nature and place of the work proposed to be done—

- (a) to the council, if the work is to be done on or under a road ; or
- (b) to the Minister of Works if the work is to be done on or under Crown lands other than a road.

The Council or the Minister may give Apcel reasonable directions relating to the execution of the work and the place where it is to be done and Apcel will comply with any such directions.

5. (1) The State will at the request of Apcel, assist Apcel to sink or obtain bores outside its own land in order to provide an adequate supply of water for Apcel's mills. Bores for Apcel.

(2) Apcel shall pay the State the reasonable costs incurred by the State in assisting Apcel under this clause.

6. (1) Subject to subclauses (2) and (3) of this clause the State and the Council hereby grant to Cellulose the following rights and powers namely :— Rights of Cellulose.

- (a) the right to all the water in or flowing down Snuggery Drain required by Cellulose for the purposes of the manufactures carried on or to be carried on in its mills and the right to take from Snuggery Drain at any point or points in Section 78 Hundred of Mayurra above the said weir such water as Cellulose requires for these purposes :
- (b) the right to maintain in the said drain the weir above referred to and to construct and maintain in the said drain or on any reserve adjoining it such works as are necessary to enable it to obtain the water referred to in this clause ;
- (c) the right to discharge effluent from its said mills into the Snuggery drain at any point below the said weir and into the drain 56D at a point marked X in the said plan and to cause such effluent to flow into Lake Bonney through drains 54, 52, 49 and 48.
- (d) the right to execute do and perform on any road or on any land vested in the Crown or the Council all such works acts and operations as are incidental to those mentioned in the preceding paragraphs.

(2) This clause shall not prevent any owner of land abutting the said drain from taking from or discharging into the said drain any water used for normal pastoral or agricultural purposes provided that in doing so he does not offend against the provisions of section 6 of the Act ratifying this Agreement.



(3) Before exercising any powers conferred by paragraph (b) or (d) of subclause (1) of this clause, Cellulose will give reasonable notice of the nature and place of the work proposed to be done—

- (a) to the Council if the work is to be done in or on a drain, or reserve or on or under a road ;
- (b) to the Minister of Works if the work is to be done on or under Crown lands other than a road or the site of a drain.

The Council or the Minister may give Cellulose reasonable directions relating to the construction of the works and the place where they are to be constructed and Cellulose will comply with such directions.

**Maintenance  
of drains.**

7. (1) Cellulose will maintain all that part of Snuggery Drain which is above the weir free and clear of any obstruction.

(2) Cellulose will maintain that part of Snuggery Drain which lies between the weir and the junction of Snuggery Drain with drain 54 free from any obstruction caused by or arising from the discharge of effluent into the drain by Cellulose.

(3) Apcel will maintain—

- (a) that part of drain 57 which lies between the place where effluent is discharged into the drain from the mills of Apcel and the junction of drain 57 with drain 54 ; and
- (b) that part of drain 54 which lies between the junction of drain 54 with drain 57 and the junction of drain 54 with drain 56

free from any obstruction caused by or arising from the effluent discharged by Apcel into drain 57 and flowing into the other drains mentioned in this subclause.

(4) Apcel and Cellulose jointly and severally agree to maintain—

- (a) that part of drain 54 which lies between the junction of drain 54 with Snuggery Drain, and the junction of drain 54 with drain 52 ; and
- (b) the whole of main drains 52, 49 and 48

free from any obstruction caused by or arising from effluent discharged by either of them into Snuggery Drain or drain 57, and flowing into the other drains mentioned in this subclause.

8. In the exercise of their rights and powers under this agreement Apcel and Cellulose will use reasonable care and skill and will avoid doing unnecessary damage to property of any kind and each company will make good any damage caused by it in the exercise of such rights or powers, and in particular will after disturbing the surface of any Crown Land reinstate such surface to the satisfaction of the Minister of Lands and after disturbing the surface of any road will reinstate such surface to the satisfaction of the Council.

Duty to use care and make good damage.

9. (1) The State will construct and will maintain in effective working order all such works as may from time to time be necessary to provide for and ensure the proper disposal of the effluent from the mills of Apcel and Cellulose which flows into Lake Bonney through any drains, pursuant to this Agreement, it being the intention that the State undertakes and accepts full responsibility for the effective and proper disposal of all such effluent.

Works for disposal of effluent.

(2) In consideration of the obligations undertaken by the State by subclause (1) of this clause, Apcel and Cellulose will pay the State in respect of each financial year the sum of two thousand one hundred and fifty pounds, and a proportionate part of that amount for any fractional part of a financial year and their liability to make such payment shall be joint and several.

(3) The payment under subclause (2) in respect of each financial year will be made to the Treasurer within two months after the end of that year and the first payment shall be made in respect of the year ending on the 30th day of June 1960.

10. (1) If Snuggery drain is damaged from any cause Cellulose may, if it thinks fit, make good the damage.

Right of Cellulose to make good damage to drain.

(2) If such damage is caused by the wrongful act or negligence of a person other than Cellulose, Cellulose may recover from that person the amounts reasonably spent by it in making good the damage.

11. (1) Subject to any Act, bylaw or regulation Apcel and Cellulose shall have the right on land owned by them or either of them to sink bores or wells and to draw off underground water and to construct or erect any works for such purpose.

Underground water.

(2) If any Act bylaw or regulation for the time being in force requires a licence or other authority to be obtained from the State or the Council for sinking any such bore or well or drawing off such water, the State or Council will, so far as their respective legal powers permit, grant or procure the grant of any such licence or authority applied for by either Company.

Termination  
of other  
Agreements.

12. As soon as the Bill for ratifying this Agreement comes into operation as an Act the Indentures mentioned in Recital D. to this Agreement shall have no further force or effect except as to rights which have accrued or liabilities which have been incurred by the parties prior to such date.

His Excellency the Governor of South Australia caused the public seal of the State to be hereto affixed, and signed this Indenture on the twenty-second day of October 1958 in the presence of:



M. A. F. PEARCE.

The common seal of the district Council of Millicent was hereto affixed this seventeenth day of October 1958 in the presence of:



R. C. DEGARIS, Chairman.

HAROLD H. WHITEHEAD, District Clerk.

The Common Seal of Apcel Limited was hereunto affixed by the authority of a resolution of the Board of Directors in the presence of:



C. E. PIPER, Director.

D. C. RUTHERFORD, Acting Secretary.

The Common Seal of Cellulose Australia Limited was hereunto affixed this 16th day of October 1958 with the authority of the Board of Directors in the presence of TOM ELDER BARR SMITH and FRANCIS COOPER WADE Directors and HOWARD WILLIAM THOMAS Acting Secretary.

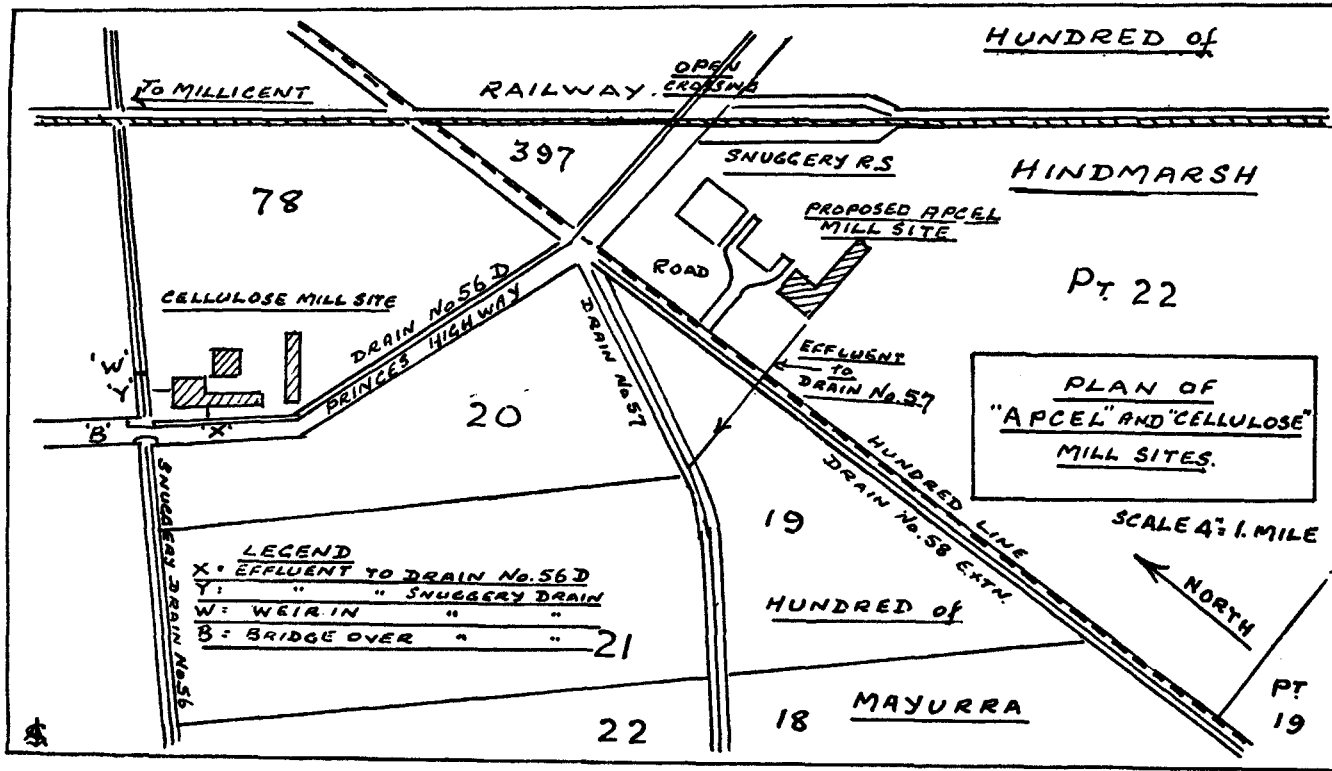


TOM E. BARR SMITH, Director.

F. C. WADE, Director.

H. W. THOMAS, Acting Secretary.

PLAN REFERRED TO IN AGREEMENT



1958. Pulp and Paper Mills Agreement No. 54  
 Act, 1958.