



ANNO DECIMO TERTIO

## ELIZABETHAE II REGINAE

A.D. 1964

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### No. 23 of 1964

An Act to approve and ratify an Indenture made between the State of South Australia and Apcel Limited relating to the operation and extension of a pulp and paper mill in the State of South Australia and to provide for carrying that Indenture into effect and for other purposes.

[Assented to 8th October, 1964.]

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

1. This Act may be cited as the "Pulp and Paper Mill (Hundreds of Mayurra and Hindmarsh) Act, 1964". Short title.

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

"the Company" means the company incorporated in South Australia under the name of Apcel Limited having its registered office at the time of passing this Act at Princes Highway Snuggery *via* Millicent in the State and includes its successors and assigns:

"the Indenture" means the indenture a copy of which is set out in the Schedule to this Act.

(2) Expressions used in this Act shall, unless the contrary intention appears, have the same respective meanings as in the Indenture.

3. (1) The Indenture is hereby approved and ratified and shall, notwithstanding any other Act or law or any regulation, proclamation or order, be carried out and be given effect as Ratification of Indenture.

though the provisions thereof had been expressly enacted in this Act.

(2) The rights and powers specified in clause 5 of the Indenture are hereby conferred on the Company subject to such provisions as therein contained.

**Local  
Government  
Rates.**

4. (1) The rates payable in respect of any year to the council of the district council district or municipality in which the mill is situated in respect of the mill site and the mill shall be—

(a) while one paper machine is operating commercially at the mill—such sum not exceeding Seven hundred and fifty pounds as the council may by resolution declare ;

(b) while two paper machines are operating commercially at the mill—such sum not exceeding Two thousand pounds as the council may by resolution declare ; and

(c) while three paper machines are operating commercially at the mill—such sum not exceeding Three thousand pounds as the council may by resolution declare.

(2) In any year after three paper machines have been operating commercially at the mill for not less than five years the council may by resolution declare the rates payable by the Company for that year in respect of the mill site and the mill at a sum in excess of Three thousand pounds but not exceeding Four thousand pounds.

(3) Payment of the amounts declared as rates under this section shall be a discharge of all liability of the Company for general, particular, special or separate rates in respect of the mill site and the mill.

(4) This section shall have effect notwithstanding any other enactment, or any rate at any time declared or levied by any district or municipal council.

**Exemption  
from Rates.**

5. The rights granted under the Indenture to the Company authorizing the Company to maintain repair remove and replace pipelines and electric transmission lines on over or under any Crown land, road, foreshore or sea-bed, and any pipelines or electric transmission lines or other structures erected or laid down by the Company in exercise of those rights shall not be ratable property within the meaning of the Local Government Act, 1934-1963.

6. The Company or any other person or authority shall not be liable in any way for discharging effluent from the mill into a drain in accordance with the Indenture or for the flow of such effluent from any one drain directly or indirectly into any other drain or into Lake Bonney or the sea or for any consequences of such discharge or flow or for discharging smoke, dust or gas from the mill into the atmosphere or for creating noise or odours or for any alleged consequences of such discharge flow or creation if such discharge flow or creation or such consequences is or are reasonably necessary for the efficient operation of the works of the Company and not due to negligence on the part of the Company, its servants or agents.

Effluent.

7. If the Company assigns its rights concessions and obligations to any person under clause 17 of the Indenture, that person shall, on and after such assignment, be liable in all respects for any failure to perform any obligation or duty undertaken by the Company under the Indenture as if that person were a party to the Indenture and had expressly undertaken to perform such obligation or duty.

Liability of  
Assignee.

8. (1) Notwithstanding anything to the contrary in 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 or relating to this Act or the Indenture ;
- (b) agree with the Company to submit any dispute or difference between the State and the Company arising out of or relating to the Indenture to arbitration under the laws relating to arbitration for the time being in force in the State ; and
- (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 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.

## SCHEDULE.

## THE INDENTURE.

THIS INDENTURE made the 7th day of July one thousand nine hundred and sixty-four BETWEEN THE HONOURABLE SIR THOMAS PLAYFORD Premier of the State of South Australia for and on behalf of that State of the one part and APCEL LIMITED a company incorporated in the State of South Australia and having its registered office in that State at Princes Highway, Snuggery *via* Millicent (hereinafter referred to as "the Company" which expression shall include the successors and assigns of Apcel Limited) of the other part

## WHEREAS—

- (a) The Company has established a pulp and paper mill and has installed and is operating a paper machine at Snuggery near Millicent pursuant to the Pulp and Paper Mills Agreement Act, 1958 :
- (b) The Company proposes with the approval of the State to install at the mill at least one additional paper machine and make other extensive additions to its plant at the mill site, and for that purpose has made certain preliminary arrangements :
- (c) The establishment and operation of such additional machine and ancillary equipment would promote the further development of the South-Eastern portion of the State and be beneficial to the State as a whole and would provide an assured market for products of the State forests :
- (d) For the proper conduct of its expanded operations it is necessary that the Company should be provided with certain facilities and be granted certain interests in land and certain rights and powers without which the Company cannot undertake the expansion to be effected by the proposed installation and additions hereinbefore referred to : and
- (e) The Government of the State desiring to assist the Company to expand and increase the output of the said mill has agreed subject to the approval and ratification of this Indenture by the Parliament of South Australia and to the extent of the powers now or hereafter vested in the State to grant or assist the Company to secure such facilities such interests in land and such rights and powers as are necessary or expedient to facilitate the Company's expansion aforesaid :

NOW THIS INDENTURE WITNESSETH that the parties hereto covenant and agree with each other as follows—

1. (1) In this Indenture, unless the context otherwise requires— Interpretation.

“Crown land” means land owned by the Crown :

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

“the mill” means the pulp and paper mill already established by the Company at Snuggery near Millicent pursuant to the Pulp and Paper Mills Agreement Act, 1958, and such further extensions and additions thereto to be made pursuant to this Indenture including adjacent structures equipment and facilities for the production and distribution of electricity, for the carriage treatment and storage of water and effluent, and for the transportation and storage of raw materials fuel and manufactured products and offices :

“the Council” means the District Council of Millicent :

“the mill site” means the land upon which the mill is erected and all land owned by the Company adjacent to the mill :

“the Treasurer” means the Treasurer of South Australia :

“the State” means the State of South Australia :

“the weir” means the weir in the Snuggery drain marked on the plan annexed to the agreement contained in the Schedule to the Pulp and Paper Mills Agreement Act, 1958.

(2) In this Indenture any drain designated by a number means the drain bearing that number which is under the control and management of the Council.

(3) This Indenture shall be interpreted according to the laws for the time being in force in South Australia.

2. (1) The clauses of this Indenture other than this clause shall not come into operation unless the Parliament of the State passes a Bill to approve, ratify and give effect to this Indenture and to confer on the Company the rights and powers specified in clause 5 hereof. Operation of Indenture.

(2) If such Bill is so passed the said clauses shall come into operation and become binding on the parties hereto upon and from the day when such Bill becomes operative as an Act.

**Construction  
of Mill.**

3. (1) The Company will install and operate at least one paper machine and ancillary plant on the mill site in addition to the paper machine already installed and operated by the Company on the mill site.

(2) In the design construction equipment and operation of the mill and of each and every addition and alteration thereto the Company will comply with accepted modern standards and practices applicable to pulp and paper mills.

**Housing.**

4. (1) The Company will from time to time inform the Treasurer of the number of houses which the Company desires to be provided for the officers and employees of the Company at the mill and of the dates upon which the provision of such houses is desired.

(2) The State will build or cause to be built at Millicent or at such other locality or localities as may be agreed upon by the Treasurer and the Company the number of houses so indicated by the Company including a number of houses of suitable standard to be made available to selected officers or employees of the Company at the mill but the State shall not be obliged to build or cause to be built more than four hundred houses in all and not more than one hundred and fifty in any one year under this clause.

(3) The State will arrange that the houses built under this clause shall be offered to officers or employees of the Company as tenants or purchasers upon reasonable terms and conditions.

**Rights of the  
Company.**

5. (1) Subject to subclauses (2) and (3) of this clause the Company shall have the following rights and powers namely :

(a) the right to discharge all effluent from the mill 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 the Company 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) without payment of any rent royalty or any other charge and at the Company's own expense, the right to lay maintain repair and replace on or under any road such pipes as the Company considers necessary, leading from the mill to the Snuggery drain at any point below the weir and to drain 57 or to either of them for the purpose of conveying effluent into those drains ;

(c) without payment of any rent royalty or any other charge and at the Company's own expense, the right to lay maintain repair and replace on or under

any Crown land or any road or land vested in the Council, such pipes to convey water to the mill and such electric powerlines as the Company considers necessary ;

- (d) the right to take without charge from drains 56D and 57 such water as the Company requires for the manufactures carried on or to be carried on in the mill and the further right to take from the Snuggery drain such water for use in the mill as passes the inner top edge of the weir ;
- (e) without payment of rent royalty or other charge, the right to sink bores on any Crown land under proper supervision of the authorities responsible for the administration of such land ;
- (f) the right to execute do and perform on any Crown land or on any land vested in the Council all such works acts and operations as are incidental to those mentioned in the preceding paragraphs.

(2) Before exercising any rights or powers referred to in paragraphs (b), (c), (e) or (f) of subclause (1) of this clause, the Company 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 land vested in the Council ; or
- (b) to the Minister of Works if the work is to be done on or under Crown lands other than a road.

(3) The Council or the Minister, as the case may be, may give the Company reasonable directions relating to the execution of the work and the place where it is to be done and the Company will comply with any such directions.

6. (1) The State will at the request of the Company assist the Company to sink or obtain bores outside its own land in order to provide an adequate supply of water for the mill. Bores for the Company.

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

(3) In the event of an adequate supply of water for the Company's requirements not being available as herein provided the State shall at the request and with the agreement of the Company make other arrangements for an adequate supply of water and shall provide all capital moneys for such purpose and shall sell such water to the Company at a rate per thousand gallons not exceeding the actual cost of supplying such water

including interest on the capital provided and depreciation but excluding any capital redemption payments.

Payment to  
The District  
Council of  
Millicent.

7. (1) Within thirty days after the date on which the Bill to approve and ratify this Indenture becomes operative as an Act the Company shall pay the sum of Five hundred pounds to the Council and thereafter during the period of this Indenture within thirty days after the end of each period of twelve months from such date notice of which shall be given in writing by the Council to the Company, the Company shall pay to the Council the sum of Two hundred and fifty pounds.

Maintenance of  
drains.

(2) In consideration of and subject to the due payment to the Council as set out in subclause (1) the Company shall be freed of any responsibility for the maintenance or upkeep of drain 57, or drain 54 or any other drain, and the maintenance of those drains and the obligation to keep them free from any obstruction shall be the responsibility of the Council.

Duty to Use  
Care and  
Make Good  
Damage.

8. In the exercise of its rights and powers and in the discharge of its obligations under this Indenture the Company will use reasonable care and skill and will avoid doing unnecessary damage to property of any kind and will make good any damage caused by it in the exercise of such rights and powers or in the discharge of its obligations, 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.

Works for  
Disposal of  
Effluent.

9. The responsibility of the State for the maintenance of the works necessary to provide for and ensure the proper disposal of the effluent from the mill and the Company's responsibility to make certain annual payments to the State are as set out in the Schedule to the Pulp and Paper Mills Agreement Act, 1958.

Underground  
Water.

10. (1) The Company shall have the right on land owned by it to sink bores or wells and to draw off underground water and to construct or erect works for any such purposes.

(2) If any Act by-law 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 the Council will, so far as their respective legal powers permit, grant or procure the grant of any such licence or authority applied for by the Company.

(3) The State will not grant to any other person or company the right to draw water from any land owned by the Company.



11. (1) Within six months after receiving from the Company notice in writing stating the Company's increased requirements of electricity and subject to availability of the required equipment the State will arrange for the Company to be provided with such increased requirements in accordance with and subject to compliance with the laws in force for the time being in relation thereto. Power  
Supply.

(2) In the event of the Company wishing to install its own electric power plant with a view to operating such plant in parallel with the grid of the Electricity Trust of South Australia or feeding back power thereto the Company will first obtain from the Trust its approval of the type and size of plant and the system of protection to be installed.

(3) Subject to subclause (2) of this clause the Company may, in accordance with such terms and conditions as are previously agreed upon between the Company and the Trust, operate its own electric power plant in parallel with the grid of the Electricity Trust of South Australia and feed back power thereto and supply electric power generated by such plant to any wholly-owned subsidiary of the Company established or operating on the mill site.

12. The South Australian Railways Commissioner (in this clause referred to as "the Commissioner") will construct the extension of the railway sidings required for the expansion of the mill to be effected under this Indenture, exclusive of earthworks, and bear the cost of doing so (estimated at the date of this Indenture at Fourteen thousand pounds (£14,000)) and the Company shall pay to the Commissioner a surcharge of One pound (£1) per ton on the freight rates to be charged on all raw materials carried by rail into the mill site until such time as an amount has been paid to the Commissioner equal to the actual cost of such extension together with interest at the rate of five and one half per centum per annum on such balance amount of the actual cost as is outstanding at the end of each month. Railway  
Facilities.

13. The State shall ensure :

- Taxes and  
Charges.
- (a) that taxes or other charges or levies imposed by the State on the cartage of goods by road shall not discriminate against the Company as compared with any other decentralised industry ; and
  - (b) that the State in the exercise of any of its powers in relation to the control co-ordination or rationalization of transport by road rail sea or air shall not discriminate against the Company as compared with any other industry within South Australia.

**Industrial  
Classification.**

14. The State shall ensure if necessary by legislation that the mill site is zoned or otherwise protected during the period of this Indenture so that the initial or projected operations of the Company may be undertaken and carried on without interference by public authorities or private persons on the grounds of operations contrary to zoning.

**No Compulsory  
Acquisition of  
Mill Site.**

15. The State agrees that, having regard to the particular nature of the industry established on the mill site and subject to the performance by the Company of its obligations under this Indenture, the State will not during the currency of this Indenture compulsorily acquire or resume or suffer or permit to be compulsorily acquired or resumed by any State instrumentality or by any local or other authority of the State any portion of the mill site nor will the State create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State any road right of way or easement of any nature or kind whatsoever over or in respect of the mill site.

**Power to  
Authorize  
Compulsory  
Purchase, etc.**

16. Where the Treasurer is satisfied by the Company and from such other enquiries as he shall think fit that it is necessary or desirable for the operation or expansion of the mill that any land or rights over land be obtained by the Company and that the Company is unable to obtain such land or rights on fair terms by private treaty, the State will take such action as may appear to it desirable and practicable in the circumstances to assist the Company in the acquisition of such land or rights.

**Assignment of  
Rights.**

17. (1) The Company may assign all its rights concessions and obligations under this Indenture—

- (a) to Australian Paper Manufacturers Limited or any subsidiary of that company ;
- (b) to Kimberly-Clark Corporation, Neenah, Wisconsin, U.S.A. or any subsidiary of that company ;
- (c) to Kimberly-Clark of Australia Pty. Limited or any subsidiary of that company ; or
- (d) with the prior consent in writing of the Treasurer, to any other person approved by the Treasurer.

(2) In this clause, "subsidiary" has the same meaning as that assigned to that expression in the Companies Act, 1962.

**Amendment of  
Agreement.**

18. The Treasurer and the Company may from time to time by agreement amend in writing this Indenture by such additions and variations in any matters of detail or ambiguity as may be necessary or desirable to facilitate the carrying out of this Indenture.

19. The duration of this Indenture shall be for a period of fifty years from the date hereof. Duration of Agreement.

IN WITNESS whereof the parties hereto have executed this Indenture.

SIGNED, SEALED and DELIVERED }  
by The Honourable SIR THOMAS } T. PLAYFORD (L.S.)  
PLAYFORD in the presence of : }  
J. S. WHITE }

The Common Seal of APCEL }  
LIMITED was hereunto affixed } H. J. SHEERIN, Director  
by the authority of a resolution } (L.S.)  
of the Board of Directors in the }  
presence of : }  
S. J. CLARK, Secretary

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

EDRIC BASTYAN, Governor.