

**SYDNEY HARBOUR TUNNEL (PRIVATE JOINT
VENTURE) AMENDMENT BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 so as to ratify and approve—

- (a) the Ensured Revenue Stream Agreement; and
- (b) the Net Bridge Revenue Loan Agreement,

which were entered into, pursuant to that Act, on 29 June 1987.

Clause 1 specifies the short title of the proposed Act.

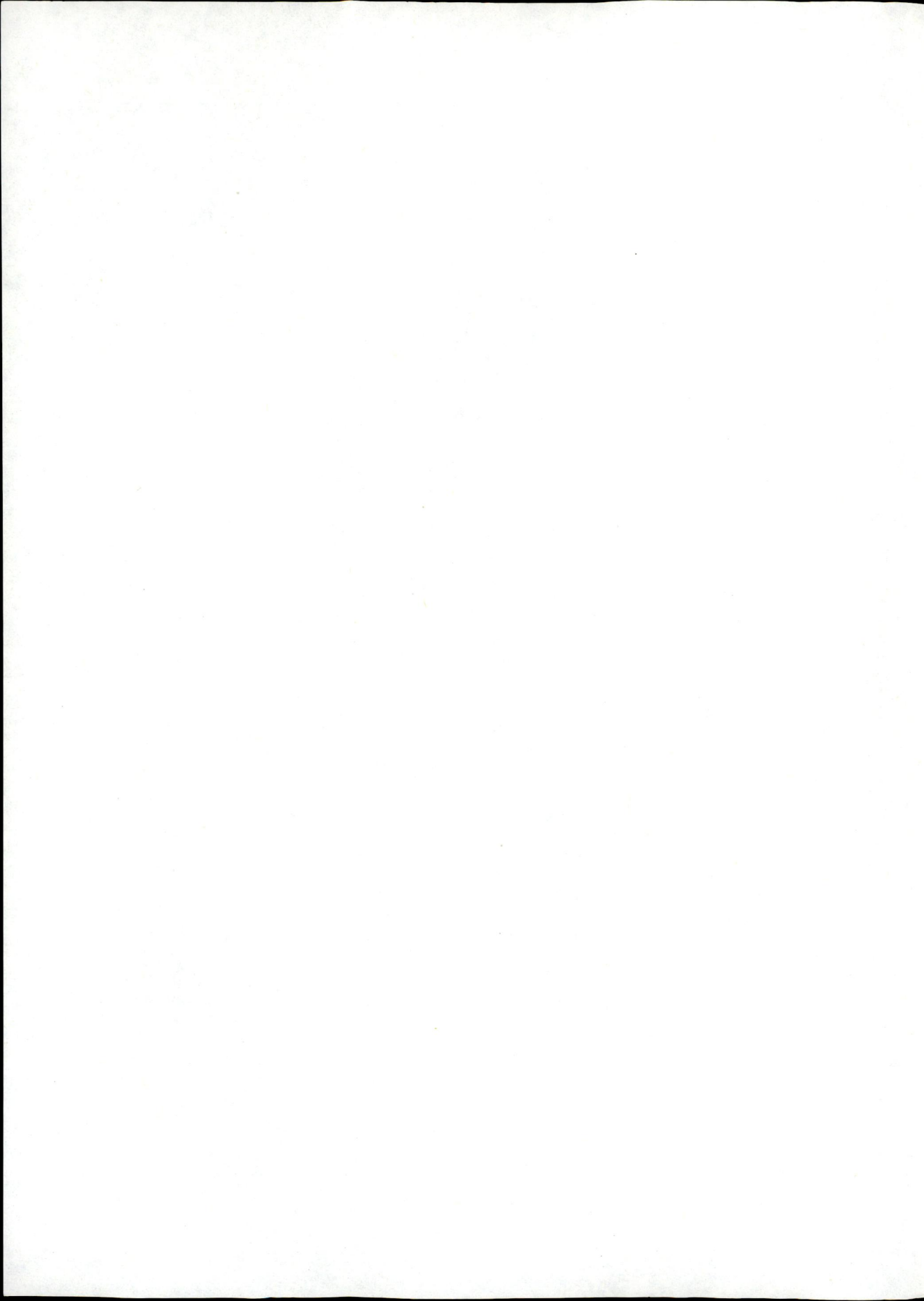
Clause 2 gives effect to the Schedule of amendments to the Principal Act.

Schedule 1 (1) amends section 2 (2) of the Principal Act as a consequence of the other amendments effected by Schedule 1.

Schedule 1 (2) substitutes section 5 of the Principal Act. The current section 5 is the provision which gave the Minister the authority to enter into the Ensured Revenue Stream Agreement. The new section 5 ratifies and approves that Agreement and also the Net Bridge Revenue Loan Agreement, which was entered into by the Commissioner for Main Roads under the authority conferred by section 6 of the Principal Act.

Schedule 1 (3) amends section 6 (1) of the Principal Act so as to omit the words that confer on the Commissioner for Main Roads the authority to enter into the Net Bridge Revenue Loan Agreement.

Schedule 1 (4) omits Schedules 5 and 6, which contain the proposed drafts of the Ensured Revenue Stream Agreement and the Net Bridge Revenue Loan Agreement, and inserts in their place two new Schedules which contain the text of the actual Agreements entered into.



SYDNEY HARBOUR TUNNEL (PRIVATE JOINT VENTURE) AMENDMENT BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Amendment of Act No. 49, 1987

SCHEDULE 1—AMENDMENTS



**SYDNEY HARBOUR TUNNEL (PRIVATE JOINT
VENTURE) AMENDMENT BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 so as to ratify and approve certain agreements entered into under that Act.

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Sydney Harbour Tunnel (Private Joint Venture) Amendment Act 1987.

5 Amendment of Act No. 49, 1987

2. The Sydney Harbour Tunnel (Private Joint Venture) Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 2)

- 10 (1) Section 2 (**Interpretation**)—
 Section 2 (2) (e), (f)—
 Omit “an agreement that is substantially in or to the effect of the form of” wherever occurring, insert instead “the”.
- (2) Section 5—
 15 Omit the section, insert instead:
 Ratification and approval of certain agreements
 5. The Ensured Revenue Stream Agreement and the Net Bridge Revenue Loan Agreement are ratified and approved.
- 20 (3) Section 6 (**Commissioner authorised to exercise functions under the Net Bridge Revenue Loan Agreement etc.**)—
 (a) Section 6 (1)—
 Omit “may enter into, and”.
 (b) Section 6 (1)—
 Omit “by,”, insert instead “by”.
- 25 (4) Schedules 5, 6—
 Omit the Schedules, insert instead:

SCHEDULE 5

(Sec. 5)

THE ENSURED REVENUE STREAM AGREEMENT

30 THIS AGREEMENT is made the 29th day of June, 1987,

BETWEEN 1. THE HONOURABLE LAURENCE JOHN BRERETON Minister for Public Works and Ports and Minister for Roads for and on behalf of HER MAJESTY QUEEN ELIZABETH THE SECOND IN RIGHT OF THE STATE OF NEW SOUTH WALES (the “Crown”); and

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

2. SYDNEY HARBOUR TUNNEL COMPANY LIMITED, a company incorporated in the State of New South Wales with its registered office at 100 Arthur Street, North Sydney (the "Company").

WHEREAS:

- 5 A. Pursuant to obligations contained in the Lease the Company has agreed to design, construct and operate the Tunnel.
- B. In consideration of the Company agreeing to design, construct and operate the Tunnel, the Crown has agreed to make the payments set out in this Agreement to the Company to enable the Company to meet financial obligations in connection with the operation of the Tunnel and the payment of principal and interest upon moneys borrowed by it for the design, construction and operation of the Tunnel.

NOW THIS AGREEMENT WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 15 When used in this Agreement the following terms shall have the following meanings unless the context otherwise requires:

"Bridge Toll Collection Costs" means the sum of \$600,000 multiplied by a fraction the numerator of which is the CPI for the calendar quarter immediately preceding the calculation and the denominator of which is the CPI for the quarter ending 30th June 1986.

"Business Day" means any day on which trading banks are open for business in Sydney.

"Commissioner" means the Commissioner for Main Roads.

"CPI" means:

- 25 (i) the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" published quarterly by the Australian Bureau of Statistics as long as there is no change in the coverage, periodicity or reference base from that applying at the date of this Agreement;
- 30 (ii) if such Index is published and there is a change in coverage and the Index is linked to previous CPI's, such Index shall be the CPI;
- (iii) if such Index is revised to a new base and a conversion factor to apply to the old Index to make it comparable with the new Index is provided, then the conversion factor shall be applied to all previous CPI's as published or otherwise revised in terms of this Agreement to calculate revised CPI's in terms of the new reference base;
- 35 (iv) if such Index is revised to a new base and a conversion factor to apply to the old Index to make it comparable with the new Index is not provided then the President of the Institute of Actuaries of Australia (or, if such Institute has ceased to exist, such other institute or body as then carries on the functions of such Institute), or his nominee, acting as an arbitrator (the "Arbitrator") shall be called upon to calculate revised CPI's for all CPI's as published or otherwise revised in terms of this Agreement and the Arbitrator's determination shall be conclusive;
- 40 (v) if such Index is published but:

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

(A) there is a change in coverage and the Index is not linked to previous CPI's;
or

(B) there is a change in periodicity,

then the Arbitrator shall be called upon to decide whether such Index is appropriate as a general indicator of the rate of price change for consumer goods and services in the capital cities of Australia or, if it is not, what other index shall be used as a substitute index for the purpose of calculating the payments due under this Agreement and the Arbitrator's determination shall be conclusive;

(vi) if there is a cessation in the publication of such Index and the Australian Bureau of Statistics publishes another Index which it states to be in replacement of such Index and the replacement Index is linked to old CPI's then all CPI's relevant to this Agreement shall be recalculated to the same reference base as the replacement Index;

(vii) if there is a cessation in the publication of such Index and the Australian Bureau of Statistics publishes another Index which it states to be in replacement of such Index but the replacement Index is not linked to old CPI's then the Arbitrator shall be called upon to calculate revised CPI's for all previous CPI's as published or otherwise revised in terms of this Agreement and the Arbitrator's calculation shall be conclusive;

(viii) if there is a cessation in the publication of such Index and the Australian Bureau of Statistics does not publish another Index in replacement of such Index then the Arbitrator shall be called upon to provide an index which he determines to be appropriate as a general indicator of the rate of price change for consumer goods and services in the capital cities of Australia and the Arbitrator's determination shall be conclusive.

"Environmental Impact Determination" means the determinations of the Commissioner dated 29th May 1987 and made under the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 and Part V of the Environmental Planning and Assessment Act 1979 in respect of the works referred to in Schedules 1 and 2 to the Sydney Harbour Tunnel (Private Joint Venture) Act 1987.

"ERS Toll" means:

(i) from 1st September, 1992 until 30th June, 1993 inclusive—\$1.00;

(ii) from 1st July, 1993 until 30th June, 2015 inclusive—\$1.03; and

(iii) from 1st July, 2015 until 31st August, 2022—88 cents.

"Immersed Tube Section of the Tunnel" means the eight pre-cast concrete segments of the Tunnel to be constructed in the dry dock situated on the land described in Schedule 4 to the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 and to be placed on the bed of Port Jackson.

"Joint Venturers" means each of Transfield (SHTJV) Pty. Limited and Kumagai Gumi Co., Ltd. and "Joint Venturer" means either one of them.

"Lease" means the Lease dated the date of this Agreement between the Commissioner and the Company.

"Mortgagee" means any holder of a first ranking Security Interest over this Agreement who gives notice to the Crown pursuant to Clause 6.

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

“Notional Crew” means a notional representative labour force comprising one of each of the following classifications subject to the following awards respectively (except that if any one or more of the nominated awards do not apply to the particular classification then such award as is applicable to that classification shall apply):

5	Classification	Award
	Electrician (Licensed)	Electricians and C State Award
	Mechanic (Tradesman)	Metal Industry Award
	Painter	National Building Trades Construction Award
10	Clerk Grade 1	Clerks (State) Award.

“Projected Traffic Volume” means during each of the periods set out in Schedule 1, one quarter of the figure set out in the right hand column.

15 “Relevant Company” means any party to a Relevant Document other than the Crown, the Commissioner, Perpetual Trustee Company Limited, Westpac Banking Corporation and the party providing the Performance Bond.

“Relevant Document” means each of:

- (a) this Agreement;
- (b) the Net Bridge Revenue Loan Agreement dated the date of this Agreement between the Commissioner and the Company;
- 20 (c) the Trust Deed dated the same date as this Agreement under which the Company has granted a charge in favour of Perpetual Trustee Company Limited;
- (d) the Deed of Covenant between ACTL Holdings Pty. Limited, Kumagai Gumi Co., Ltd., Perpetual Trustee Company Limited and the Commissioner;
- 25 (e) the Lease;
- (f) the Shareholder Loan and Equity Agreement between the Shareholder, the Company, Kumagai Gumi Co., Ltd. and ACTL Holdings Pty. Limited providing, amongst other things, for a loan of \$40,000,000 to the Company from the Shareholder;
- 30 (g) the Underwriting Agreement between the Company and Westpac Banking Corporation;
- (h) the Design and Construction Agreement between the Company and the Joint Venturers;
- 35 (i) the Operation, Repair and Maintenance Agreement between the Company and the Commissioner;
- (j) the DMR Sub-contract between the Company and the Commissioner;
- (k) the Deed of Charge in favour of the Commissioner given by the Company;
- (l) the Performance Bond provided on behalf of the Joint Venturers in favour of the Company, in the amount of \$40,000,000;
- 40 (m) the Guarantee and Indemnity between Kumagai Gumi Co., Ltd., Transfield Pty. Limited and other companies in the Transfield group of companies, the Company and the Commissioner;
- (n) the Subcontract Charge between Transfield Kumagai Contracting Pty. Limited and the Commissioner; and

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

(o) any other document or agreement which the parties to this Agreement agree is to be a Relevant Document for the purposes of this Agreement, and any document or agreement entered into under, or for the purpose of amending or novating, any of them.

5 “Security Interest” includes any mortgage, pledge or charge or any security or preferential interest or arrangement of any kind given by the Company.

“Shareholder” means Tunnel Holdings Pty. Limited.

10 “Special Account” means the account of the Company No. 032-099-88-9458 with Westpac Banking Corporation, 169 Miller Street, North Sydney or such other account as the Company and the Mortgagee notify the Crown in writing from time to time.

“Tax Act” means the Income Tax Assessment Act 1936.

15 “Tunnel” means the whole of the permanent works to be designed and constructed on and in the Tunnel Site (as defined in the Lease), the scope of which works is set out in the Scope of Works and Design Criteria contained in Schedule 1 to the Lease.

“Tunnel Toll Receipts” means the gross toll receipts of the Company paid into the Special Account from the operation of the Tunnel during the calendar quarter immediately preceding the date on which any calculation is made as certified by the Company’s auditors.

20 “Weighted Index” means:

(i) for the period beginning on 1st September, 1992 and expiring on 30th June, 1993—two; and

(ii) after that date the amount calculated in accordance with the following formula:
Weighted Index

$$25 \quad = \left(d \times \frac{CPI^H}{CPI^1} \right) + \left(e \times \frac{CPI^2}{CPI^1} \right) + \left(f \times \frac{WI^2}{WI^1} \right) + \left(g \times \frac{EI^2}{EI^1} \right)$$

where

$$30 \quad e = (T \times A) / [A + B + C]$$

$$f = (T \times B) / [A + B + C]$$

$$g = (T \times C) / [A + B + C]$$

$$d = 1 - (e + f + g)$$

$$35 \quad A = AA \times \frac{CPI^1}{CPI^3}$$

$$B = BB \times \frac{WI^1}{WI^3}$$

$$40 \quad C = CC \times \frac{EI^1}{EI^3}$$

CPI^H is the highest CPI for any quarter between the quarter ended 30 June 1986 and the last full calendar quarter prior to the date on which the calculation of Weighted Index is being made (referred to in this definition of “Weighted Index” as the “last calendar quarter”).

45 CPI^2 is the CPI for the last calendar quarter.

CPI^3 is the CPI for the calendar quarter immediately preceding the last calendar quarter.

CPI^1 is the CPI for the quarter ended 30 June 1986.

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

- WI² is the cost of employment of the Notional Crew for the last calendar quarter.
 WI³ is the cost of employment of the Notional Crew for the calendar quarter immediately preceding the last calendar quarter.
- 5 WI¹ is the cost of employment of the Notional Crew for the calendar quarter ended 30 June 1986.
- EI² is the bulk supply tariff as published in the latest Annual Report of the Electricity Commission of the New South Wales for the last calendar quarter or if such tariff is not published, is the value of the product of EI¹ and CPI² divided by CPI¹.
- 10 EI³ is the bulk supply tariff as published in the latest Annual Report of the Electricity Commission of New South Wales for the calendar quarter immediately preceding the last calendar quarter or if such tariff is not published, is the value of the product of EI¹ and CPI³ divided by CPI¹.
- 15 EI¹ is the bulk supply tariff as published in the Annual Report of the Electricity Commission of New South Wales for the year ended 30 June 1986 namely 5.2224 cents per kilowatt hour.
- AA is the percentage of actual operating expenditure of the Company incurred during the last calendar quarter, as certified by its auditors, remaining after deducting the sum of percentages calculated for BB and CC below.
- 20 BB is the percentage of the actual operating expenditure of the Company incurred during the last calendar quarter, as certified by its auditors, attributable to the cost of employment of the Company's personnel.
- CC is the percentage of the actual operating expenditure of the Company incurred during the last calendar quarter, as certified by its auditors, attributable to the provision of electricity.
- 25 T is \$2,600,000 divided by the product of the Projected Traffic Volume for the last calendar quarter and the ERS Toll for the last calendar quarter.

1.2 Interpretation

- 30 In this Agreement headings are for convenience only and shall not affect its interpretation and except to the extent the context otherwise requires:

- (a) words denoting the singular number shall include the plural and vice versa;
- (b) references to Clauses, Annexures and Schedules are references to them in and to this Agreement.

1.3 Calculation

- 35 All calculations under this Agreement shall be rounded upwards to the nearest \$100 and all intermediate calculations shall be made to 4 decimal places unless otherwise stated.

1.4 Business Days

If any payment is required to be made on a day which is not a Business Day, it shall be made on the preceding Business Day.

40 2. ENSURED REVENUE STREAM

2.1 Ensured Revenue Stream

- The Crown grants the Company, unless and to the extent that the Mortgagee otherwise agrees in writing, the right to receive an amount calculated in accordance with the following formula and undertakes to make payment to the Company of such amount in the manner referred to in Clause 2.2:
- 45

$$\text{Amount payable} = (\text{ERS Toll} \times \text{Projected Traffic Volume} \times \text{Weighted Index}) - (\text{Tunnel Toll Receipts} + \text{Bridge Toll Collection Costs}).$$

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

Each such payment (referred to in this Agreement as an “Ensured Revenue Stream Payment”) shall be made to the Special Account.

2.2 Calculation of Amount Payable and Payment

(a) (First Payment of ERS)

5 Not later than 1st October 1992 the Company shall provide the Crown with a
statement showing the calculation of the amount of the first Ensured Revenue
Stream Payment which shall be paid on 10th October 1992. The amount shall
be based upon the CPI for the calendar quarter ending on 30th June 1992 and
10 shall be one third of the amount calculated by applying the formula contained
in Clause 2.1.

(b) (Adjustment of First Payment)

15 (i) By 1st November 1992 or as soon thereafter as possible after the CPI for
the calendar quarter ended 30th September 1992 becomes available the
Company shall provide the Crown with a further statement showing the
calculation of the amount of the first Ensured Revenue Stream Payment
based on the actual CPI for the calendar quarter ending on 30th September
1992 and, where any other variable in the formula in Clause 2.1 (including
20 any variable in the definition of Weighted Index) was, for the purpose of
calculating the payment under paragraph (a), calculated by reference to the
calendar quarter ended 30th June 1992 (referred to in this Clause 2.2 as a
“Past Period Variable”), based on the actual figure for that variable for the
quarter ended 30th September 1992.

25 (ii) The adjustment to the 10th October 1992 payment referred to in Clause 2.2
(a) required by such further statement shall be made on 10th November 1992
by the Crown making a payment to the Company of the relevant amount
or deducting the relevant amount from any Ensured Revenue Stream
Payment to be made on that date. If however the CPI for the calendar
30 quarter ended 30th September 1992 or the actual figure for any other Past
Period Variable for that quarter is not available by 5th November 1992, then
in calculating the adjustment, if any, to be made, the CPI or relevant Past
Period Variable shall be that used for the purpose of calculating the payment
under paragraph (a).

(c) (Subsequent monthly payments of ERS)

35 Within 32 days after the end of each calendar quarter for which the CPI is
calculated after 30th September 1992 up to and including the calendar quarter
ended 31st March 2022 the Company shall provide the Crown with a statement
showing the calculation of the amount of the Ensured Revenue Stream Payments
to be made by the Crown based upon the CPI applicable to the calendar quarter
40 most recently ended. On the 10th day of the 2nd, 3rd and 4th months after the
month in which such quarter ends, the Crown shall pay one third of the amount
stated in the statement.

(d) (Adjustment of subsequent monthly payments of ERS)

45 Once the CPI for each calendar quarter is known (by whichever of the means
referred to in the definition of CPI in Clause 1.1) all Ensured Revenue Stream
Payments by the Crown not already adjusted pursuant to this Clause 2.2 will
require adjustment as each payment will have been made upon the basis of the
CPI and other Past Period Variables for a preceding calendar quarter rather than
on the basis of the CPI and other Past Period Variables calculated in respect of

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

the calendar quarter during which the payments were made. Accordingly, on each occasion the Company delivers a statement showing calculations of the amount of payments to be made by the Crown pursuant to Clause 2.2 (c) and on the day the Company delivers a statement under Clause 2.2 (e) it shall also deliver a statement (an "Adjustment Statement") showing revised calculations of the Ensured Revenue Stream Payments which would have been payable in respect of the 4th, 3rd and 2nd most recent months if based on the actual CPI for the quarter containing those months and on such of the actual figures for the Past Period Variables as are then available for those months. An adjustment, being the difference between the amount paid and the amount shown in the Adjustment Statement in respect of each such month, shall be made on the next date on which the Crown is obliged to make a payment under Clause 2.2 (c) or 2.2 (e), as appropriate, by increasing or decreasing that payment, as appropriate. If the actual figure for any Past Period Variable is not available 5 days before the date on which any Adjustment Statement is to be delivered then, in calculating the adjustment, if any, to be made under this paragraph, the relevant Past Period Variable shall be that used for the purpose of calculating the payment in respect of each such month under paragraph (c).

- (e) (Final ERS payments)
- (i) On 1st August 2022 the Company shall provide the Crown with a statement showing:
- (A) a calculation of the amount of the Ensured Revenue Stream Payments to be made by the Crown based upon an estimate of the CPI for the calendar quarter to end on 30th September 2022; and
- (B) a revised calculation of the adjustment to be paid pursuant to Clause 2.2 (d) on 10th August 2022 based upon the CPI and such of the actual figures for the Past Period Variables as are then available for the calendar quarter ended 30th June 2022.
- (ii) On 10th August, 2022 the Crown shall pay one third of the amount shown in the statement under (i)(A) above together with any adjustment in relation to (i)(B) above and on 10th September 2022 the Crown shall pay one third of the amount shown in the statement under (i)(A) above.
- (iii) For the purpose of (i) above, the estimate by the Company of the CPI for the calendar quarter to end on 30th September 2022 shall be the CPI for the calendar quarter ended 30th June 2022 divided by the CPI for the calendar quarter ended 31st March 2022 and the product thereof shall be multiplied by the CPI for the calendar quarter ended 30th June 2022.

2.3 Artificial CPI's

If CPI² is unavailable for any reason within 32 days of the end of the relevant calendar quarter, then the Ensured Revenue Stream Payment based upon each calendar quarter for which the CPI is calculated after 30th September 1992 up to and including the calendar quarter ended 31st March 2022 shall be calculated in terms of Clause 2.2 (c) except that CPI³ for the relevant calendar quarter shall be used in place of CPI².

If CPI² does not become available for any reason within 75 days of the end of the relevant calendar quarter, then the President of the Institute of Actuaries of Australia (or, if such Institute has ceased to exist, such other institute or body as then carries on the functions of such Institute), or his nominee, acting as an arbitrator (the "Arbitrator") shall be called upon to calculate an artificial CPI² within 42 days of request, which calculation shall be conclusive.

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

If CPI² becomes available within 120 days of the end of the relevant calendar quarter, then that CPI² shall be used to calculate adjustments to previously made Ensured Revenue Stream Payments and the appropriate adjustments shall be payable on the next monthly payment date.

- 5 If upon the expiration of 120 days from the end of the relevant calendar quarter no CPI² has become available, that artificial CPI² as calculated by the Arbitrator shall become CPI² for that relevant calendar quarter.

The artificial CPI² shall then be used for the calculation of adjustments to the previously made Ensured Revenue Stream Payments and the appropriate adjustments shall be
10 payable on the next monthly payment date.

If CPI² is subsequently published by the Australian Bureau of Statistics for a quarter in respect of which an artificial CPI² calculated under this Clause has been applied to calculations and Ensured Revenue Stream Payments, then no adjustment to past Ensured Revenue Stream Payments shall be made but such published CPI² shall apply for all other
15 purposes of this Agreement.

Any reference in this Clause 2.3 to CPI² and CPI³ shall be a reference to those expressions as defined in the definition of "Weighted Index."

2.4 Reduction in Ensured Revenue Stream Payment

If:

- 20 (a) operations of the Tunnel do not commence on or before 1st September 1992 for any reason;
- (b) at any time after operation of the Tunnel has commenced it is closed for a period or periods exceeding seven consecutive days; or
- 25 (c) savings in the cost of the ventilation system for the Tunnel are possible as a result of revised estimates of exhaust emission rates per vehicle,

the Company shall determine the savings in operating expenses (excluding financing expenses and tax provisions) resulting from such non-commencement, closure or savings in cost and, provided the consent of the Mortgagee is endorsed on the relevant notice, notify the Crown of the amount of such savings. The next succeeding Ensured Revenue
30 Stream Payment by the Crown may at the discretion of the Crown be reduced by an amount not greater than the amount so notified.

2.5 Conditions Precedent

The obligation of the Crown to make Ensured Revenue Stream Payments is subject to the condition that it has received, in form and substance satisfactory to it, the following
35 prior to the making of the first payment:

- (a) (Memorandum and Articles): a certified copy of the Memorandum and Articles of Association of each Relevant Company;
- (b) (Corporate authorisations): a certified copy of all corporate authorisations of each Relevant Company required for the execution and performance of each Relevant
40 Document to which it is a party;
- (c) (Relevant Documents): a certified copy or, in the case of any Relevant Document to which the Company is a party, the original, of each duly executed, stamped and, where relevant, registered Relevant Document;

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

- (d) (Capital contribution): evidence that the Shareholder has contributed an initial \$200,000 capital to the Company, and is bound and will have the financial means to contribute additional capital of \$6,800,000; and
- 5 (e) (Maritime Services Board): evidence that the Maritime Services Board has granted or will grant a lease of the land described in Schedule 4 to the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 and a licence for, amongst other things, access to the Port Jackson harbour bed.

3. OBLIGATIONS OF CROWN ABSOLUTE AND UNCONDITIONAL

- 10 3.1 The obligation of the Crown to make Ensured Revenue Stream Payments to the Company shall, subject to Clauses 2.4 and 2.5, be free from any right of set-off, shall be absolute, unconditional and irrevocable and shall not be affected by any default, event of force majeure or other event or circumstance which otherwise would or might at law terminate or permit termination of this Agreement or any of its provisions, or excuse compliance with or performance or provide a defence to any proceedings to enforce the
- 15 Crown's obligations under this Agreement. The obligations of the Crown shall not be terminated on account of any such matter or thing and shall be enforceable notwithstanding any such matter or thing.

- 20 3.2 Without limiting the generality of Clause 3.1 the obligations of the Crown to make Ensured Revenue Stream Payments shall subject to Clauses 2.4 and 2.5 not be affected by the occurrence of any of the following:

- (i) the Tunnel not commencing operations or operating continuously;
- (ii) the Tunnel not having been completed;
- (iii) the Tunnel not being constructed;
- 25 (iv) any interruption or cessation in the operation either in whole or part of the Sydney Harbour Bridge;
- (v) the failure of the Crown to receive any money in the form of tolls from the operation of the Sydney Harbour Bridge;
- 30 (vi) the existence, currency or enforceability or legality of any agreement, arrangement or understanding whether oral or in writing between any persons in any way connected with the construction or operation of the Tunnel;
- (vii) any breach or alleged breach by any person of the terms of any such agreement, arrangement or understanding; or
- (viii) the cessation of the existence of any party to any such agreements, arrangements or understandings.

35 4. RENEGOTIATION

4.1 Renegotiation Events—General

- Where one of the following events occurs either party may give notice (in the case of paragraph (c) below within 10 Business Days of receipt of the relevant income tax assessment, in which respect time shall be of the essence) to the other, which notice will
- 40 only be validly given if the consent of the Mortgagee is endorsed on the notice, that it wishes to alter the Ensured Revenue Stream Payments. The events are as follows:

- 45 (a) A material unforeseen increase or decrease in the cost of operating the Tunnel (excluding increases in financing costs and tax provisions) occurs as a result of circumstances beyond the reasonable control of the Company (including, without limitation, any change in the law of New South Wales except for awards of industrial tribunals);

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987***SCHEDULE 1—AMENDMENTS—continued**

(b) the CPI is on any of the dates specified in Schedule 2 less than the corresponding figure in Column 1 or greater than the corresponding figure set out in Column 2 of such Schedule; or

5 (c) the Company or a company which is a group company of the Company pursuant to Section 80G of the Tax Act receives an income tax assessment to the effect that its claim for a deduction from its assessable income for depreciation on the Immersed Tube Section of the Tunnel is denied and/or to the effect that tax losses (to the extent that these relate to such depreciation) are denied.

4.2 Amount of Adjustment to ERS Payment

10 Promptly upon the receipt of a valid notice arising from one of the events set out in Clauses 4.1 (a), (b) or (c) above the amount payable pursuant to Clause 2.1 shall be amended and an adjustment shall be made. The adjustment shall be as follows:

15 (a) Where the notice is given pursuant to Clause 4.1 (a) and there is an increase in the cost of operating the Tunnel the Crown shall pay to the Company the amounts certified by the Company's auditors in such notice as being the amount of the increase. Where there is a decrease the Company shall refund to the Crown the amount so determined by the Company's auditors.

20 (b) (i) Where the notice is given pursuant to Clause 4.1 (b) as a result of the CPI on any of the dates specified in Part A of Schedule 2 being less than the corresponding figure in Column 1 of Part A of Schedule 2 then not later than 1st October 1992 the Company's auditors shall prepare a statement showing the following calculation:

25
$$Z = \left(\frac{146}{CPI^6} + \frac{160}{CPI^7} + \frac{189}{CPI^8} + \frac{247}{CPI^9} + \frac{218}{CPI^{10}} + \frac{174}{CPI^{11}} \right. \\ \left. + \frac{117}{CPI^{12}} + \frac{164}{CPI^{13}} - \frac{1065}{CPI^1} \right) \times \$1,000,000 \times \frac{CPI^{14}}{153}$$

where

30 CPI^6 is the CPI for the full calendar quarter ending 31st December 1988

CPI^7 is the CPI for the full calendar quarter ending 30th June 1989

CPI^8 is the CPI for the full calendar quarter ending 31st December 1989

CPI^9 is the CPI for the full calendar quarter ending 30th June 1990

CPI^{10} is the CPI for the full calendar quarter ending 31st December 1990

35 CPI^{11} is the CPI for the full calendar quarter ending 30th June 1991

CPI^{12} is the CPI for the full calendar quarter ending 31st December 1991

CPI^{13} is the CPI for the full calendar quarter ending 30th June 1992

CPI^{14} is the highest CPI for any full calendar quarter between the quarter ended 30 June 1986 and the last calendar quarter prior to the date on which the calculation of Z is being made

40

CPI^1 is the CPI for the full calendar quarter ended 30 June 1986.

If Z is greater than zero then all Ensured Revenue Stream Payments shall be adjusted by the addition of an amount equal to Z as calculated each quarter. If Z is less than or equal to zero then no adjustment shall be made under this sub-paragraph (i) to any Ensured Revenue Stream Payment.

45

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- 5 (ii) Where the notice is given pursuant to Clause 4.1 (b) as a result of the CPI on any of the dates specified in Part B of Schedule 2 (a "Quarter End Date") being less than the corresponding figure in Column 1 of Part B of Schedule 2 the Crown shall in addition to the amount, if any, payable under subparagraph (i) pay to the Company the amount certified by the Company's auditors as being the difference between:
- 10 (A) the amount payable by the Crown under Clause 2.1 calculated using the CPI^H (as defined in the definition of "Weighted Index" in Clause 1.1) applicable to the calendar quarter ended on the relevant Quarter End Date; and
- (B) the amount which would have been payable by the Crown under Clause 2.1 if, in the calculation of Weighted Index, CPI^H was the figure set out in Column 1 of Part B of Schedule 2 opposite the relevant Quarter End Date.
- 15 (iii) Where the notice is given pursuant to Clause 4.1 (b) as a result of the CPI on any of the dates specified in Schedule 2 being greater than the corresponding figure set out in Column 2 of Schedule 2 the Company shall refund to the Crown the amount certified by the Company's auditors in such notice as being the net increase in expected revenue to the Company.
- 20 (c) Where the notice is given pursuant to Clause 4.1 (c) the following provisions shall apply:
- (i) The Company (at the written request of the Crown) shall contest such assessment by lodging an objection against such assessment with the Commissioner of Taxation within the time required by Section 185 of the Tax Act. Such objection shall contain, amongst other things, such grounds as the Crown shall reasonably request in writing.
- 25 (ii) If any such objection shall be disallowed in whole or in part by the Commissioner of Taxation, the Company shall promptly (and, in any event, within 5 Business Days after becoming aware) serve notice of such disallowance upon the Crown, and (at the written request of the Crown) shall either (at the option of the Crown) lodge a request for reference to the Administrative Appeals Tribunal or refer the objection to the Supreme Court of a specified State or Territory or the Federal Court.
- 30 (iii) If any reference to the Administrative Appeals Tribunal is decided against the Company, the Company (at the written request of the Crown) shall refer the objection to the Supreme Court of a specified State or Territory or the Federal Court, as directed by the Crown. If an appeal to a court is decided against the Company, then the Company (at the written request of the Crown) shall take such steps as the Crown may reasonably require to cause an appeal in relation thereto to be prosecuted to the extent requested by the Crown and permissible by law.
- 35 (iv) If any reference to the Administrative Appeals Tribunal or (as the case may be) any proceedings before such Supreme Court or Federal Court are decided in favour of the Company but the Commissioner of Taxation appeals against any such decision, the Company shall promptly (and, in any event, within 40 5 Business Days after becoming aware of the same) serve notice of such appeal on the Crown and (at the written request of the Crown) take such steps as the Crown may reasonably require before whatever court such appeal is to be heard.
- 45

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- 5 (v) Any request for the Company to take any action under sub-paragraphs (i) to (iv) inclusive may only be made by the Crown if within 30 days after notice by the Company to the Crown of the assessment, decision or appeal in question, the Crown requests in writing that such assessment, decision or appeal be contested or be the subject of an appeal. Further, the Crown shall and does hereby indemnify the Company from and against all liabilities, losses, costs and expenses which the Company may suffer, incur or sustain as the direct result of objecting to or contesting or appealing from any such assessment, decision or appeal including, without limitation:
- 10 (1) reasonable legal fees on a solicitor and client basis and disbursements; and
- (2) the amount of any interest or penalty which is actually incurred as a result of contesting or appealing any such assessment, decision or appeal.
- 15 In pursuance of the foregoing, if it becomes necessary in connection with any objection, reference or appeal under this Clause 4.2 (c) to make any payment to the Commissioner of Taxation on account of a disputed assessment, such payment shall be made by the Crown forthwith upon receiving notice from the Company to do so.
- 20 (vi) Notwithstanding any objection, reference or proceedings undertaken or made by or on behalf of the Company pursuant to sub-paragraphs (i) to (iv) of this Clause 4.2 (c), the Crown shall pay the amount certified by the Company's auditors (a copy of which certificate shall be annexed to the notice given by the Company pursuant to Clause 4.1 (c)) as being the additional tax payable. Forthwith, upon the determination of such proceedings, objection or reference, the Company and the Crown shall make such payments by way of adjustment as the Company's auditors determine to be necessary to give effect to the outcome of such proceedings, objection or reference.
- 25 (vii) Any determination made by the Company's auditors for the purposes of this Agreement shall be conclusive and binding on the parties to this Agreement (in the absence of manifest error) and this Agreement shall be deemed to have been amended so as to incorporate that determination, as if it had become effective immediately upon the date specified in or by reference to the relevant income tax assessment.
- 30 (viii) Any reference in this Clause 4.2 (c) to the Company includes a reference to a company which is a group company of the Company pursuant to Section 80G of the Tax Act and the Company shall procure that any such group company complies with its obligations under this Clause 4.2 (c) accordingly.
- 35
- 40 **4.3 Renegotiation Events—Construction Cost**
- Where the cost of constructing the Tunnel is increased as a result of any of the following events either party may give notice to the other (with a copy to the Mortgagee) that it wishes an alteration in the amount payable by the Crown to the Company under Clause 2.1. The events are as follows:
- 45 (a) change in the law of New South Wales affecting the design and construction of the Tunnel except for awards of industrial tribunals;
- (b) injunctive or other proceedings or relief under the law of New South Wales except where due to:

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (i) the negligence fraud or wilful misconduct of the Company, the Joint Venturers or their sub-contractors;
 - (ii) non-compliance with the Environmental Impact Determination; or
 - (iii) the Company's non-compliance with the Lease;
- 5 (c) failure of the Commissioner to comply with its obligation under Clause 2.5 of the Lease; or
- (d) acts or omissions by the Crown outside the terms of the Lease having a direct effect on the Tunnel.

4.4 Additional Payment by Crown

- 10 Where notice is given pursuant to Clause 4.3 the Company will use its best endeavours to obtain additional funding on terms acceptable to it to meet the increased costs. Where such funding is available the Crown shall pay to the Company an amount certified by the Company's auditors in the notice as being necessary to repay such additional funding and to meet all interest and other charges payable with respect to it. Where it is not
- 15 possible to arrange additional funding on terms acceptable to the Company the Crown shall pay to the Company the amount certified by the Company's auditors as being the additional cost.

5. EVIDENCE OF CALCULATIONS

- 20 (a) The Company shall procure that the Company's auditors make any calculations (and furnish appropriate certificates in respect of such calculations) which such auditors are required to make in accordance with any provision of this Agreement.
- 25 (b) The Company shall promptly provide the Crown with sufficient information (including, without limitation, a certified copy of any certificates furnished by its auditors) to enable it to check and verify any calculations made by the Company or the Company's auditors pursuant to any provision of this Agreement.

6. COMPANY'S RIGHT TO GIVE SECURITY INTEREST OVER THIS AGREEMENT

- 30 For the purpose of securing its obligations to any person or persons providing financial accommodation to it, the Company may give a Security Interest over this Agreement and its rights to payment from the Crown to any person who provides financial accommodation to the Company or to any trustee for any such person. Where any person holding a first ranking Security Interest gives notice of its interest to the Crown no
- 35 amendment to this Agreement or variation of any payment to be made under this Agreement (other than a variation pursuant to Clauses 2.4, 4.1 or 4.2 made as a result of a notice endorsed by the Mortgagee or a variation pursuant to Clause 4.3) and no waiver of the performance of any of the obligations of the Crown under this Agreement shall be effective unless approved in writing by the Mortgagee.

7. NOTICES

- 40 Any notice, approval, consent or other communication given or made to or by a party under this Agreement shall be in writing delivered to the address or sent to the telex number or facsimile number of the recipient shown below or to such other address, telex number or facsimile number as the recipient may have notified the sender and shall be deemed to be duly given or made:
- 45 (a) (in the case of delivery in person or by facsimile transmission) when delivered to the recipient at such address or facsimile number; or

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987***SCHEDULE 1—AMENDMENTS—continued**

(b) (in the case of telex) on receipt by the sender of the answerback code of the recipient at the end of transmission.

(i) The Crown:

The Minister for Roads,
C/- The Commissioner for Main Roads,
4th Floor, 309 Castlereagh Street,
Sydney, N.S.W. 2000
Telex No.: AA121825
Facsimile: (02) 218 6794

(ii) The Company:

Sydney Harbour Tunnel Company Limited,
3rd Floor, 100 Arthur Street,
North Sydney, N.S.W. 2060
Telex No.: AA21396 Answerback: TRANSHO
Attention: The Secretary
Facsimile: (02) 922 2834

8. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of New South Wales.

9. RESTRICTION ON ASSIGNMENTS

Neither the Crown nor the Company shall assign or transfer all or any part of its rights or obligations under this Agreement without the prior consent of the other of them and the Mortgagee. This Agreement shall be binding upon and inure to the benefit of each party and its respective successors and permitted assigns.

10. IN WITNESS the parties have executed this Agreement on the date first written on page 1 of this Agreement.

SIGNED by THE HONOURABLE LAURENCE JOHN BRERETON Minister for Public Works and Ports and Minister for Roads for and on behalf of HER MAJESTY QUEEN ELIZABETH THE SECOND IN RIGHT OF THE STATE OF NEW SOUTH WALES in the presence of:

KEVIN B. FORD

LAURENCE JOHN
BRERETON

SIGNED for and on behalf of SYDNEY HARBOUR TUNNEL COMPANY LIMITED by CARLO SALTERI and TADAO MITANI its Attorneys under Power of Attorney dated 29 June 1987 in the presence of:

M. OTSUKA

By his signing of this Agreement each Attorney states that at the time of signing he has received no notice of revocation of the Power of Attorney pursuant to which he so signs.

CARLO SALTERI
Attorney

TADAO MITANI
Attorney

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

	SCHEDULE 1	
5	Period	Annual toll paying vehicles using Sydney Harbour Bridge and the Tunnel
	1st July 1992—30th June 1993	36.7 million
	1st July 1993—30th June 1994	37.1 million
	1st July 1994—30th June 1995	37.4 million
10	1st July 1995—30th June 1996	37.8 million
	1st July 1996—30th June 1997	38.2 million
	1st July 1997—30th June 1998	38.5 million
	1st July 1998—30th June 1999	38.9 million
	1st July 1999—30th June 2000	39.2 million
15	1st July 2000—30th June 2001	39.5 million
	1st July 2001—30th June 2002	39.8 million
	1st July 2002—30th June 2003	40.1 million
	1st July 2003—30th June 2004	40.4 million
	1st July 2004—30th June 2005	40.6 million
20	1st July 2005—30th June 2006	40.9 million
	1st July 2006—30th June 2007	41.0 million
	1st July 2007—30th June 2008	41.2 million
	1st July 2008—30th June 2009	41.5 million
	1st July 2009—30th June 2010	41.7 million
25	1st July 2010—30th June 2011	41.9 million
	1st July 2011—30th June 2012	42.1 million
	1st July 2012—30th June 2013	42.2 million
	1st July 2013—30th June 2014	42.4 million
	1st July 2014—30th June 2015	42.5 million
30	1st July 2015—30th June 2016	42.7 million
	1st July 2016—30th June 2017	42.8 million
	1st July 2017—30th June 2018	43.0 million
	1st July 2018—30th June 2019	43.1 million
	1st July 2019—30th June 2020	43.2 million
35	1st July 2020—30th June 2021	43.3 million
	1st July 2021—30th June 2022	43.4 million
	1st July 2022—30th June 2023	43.4 million

SCHEDULE 2

	Dates		CPI	
40	PART A	Column 1		Column 2
	30/06/86	153.00		153.00
	30/09/86	155.61		155.97
	31/12/86	158.26		159.00
45	31/03/87	160.96		162.09
	30/06/87	163.71		165.24
	30/09/87	166.50		168.45
	31/12/87	169.34		171.72

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

	31/03/88	172.23	175.06
	30/06/88	175.17	178.46
	30/09/88	178.16	181.93
5	31/12/88	181.20	185.46
	31/03/89	184.29	189.06
	30/06/89	187.43	192.74
	30/09/89	190.63	196.48
	31/12/89	193.88	200.30
10	31/03/90	197.19	204.19
	30/06/90	200.55	208.15
	30/09/90	203.97	212.20
	31/12/90	207.45	216.32
	31/03/91	210.99	220.52
15	30/06/91	214.59	224.81
	30/09/91	218.25	229.17
	31/12/91	221.97	233.63
	31/03/92	225.76	238.17

PART B

20	30/06/92	229.61	242.79
	30/09/92	231.31	245.77
	31/12/92	233.03	248.79
	31/03/93	234.76	251.84
	30/06/93	236.50	254.93
25	30/09/93	238.25	258.06
	31/12/93	240.02	261.23
	31/03/94	241.80	264.43
	30/06/94	243.60	267.68
	30/09/94	245.40	270.96
30	31/12/94	247.22	274.29
	31/03/95	249.06	277.65
	30/06/95	250.90	281.06
	30/09/95	252.76	284.51
	31/12/95	254.64	288.00
35	31/03/96	256.53	291.54
	30/06/96	258.43	295.11
	30/09/96	260.35	298.74
	31/12/96	262.28	302.40
	31/03/97	264.22	306.11
40	30/06/97	266.18	309.87
	30/09/97	268.16	313.67
	31/12/97	270.15	317.52
	31/03/98	272.15	321.42
	30/06/98	274.17	325.36
	30/09/98	276.20	329.36
45	31/12/98	278.25	333.40
	31/03/99	280.31	337.49
	30/06/99	282.39	341.63
	30/09/99	284.49	345.82
	31/12/99	286.60	350.07
50	31/03/00	288.72	354.37

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

	30/06/00	290.87	358.71
	30/09/00	293.02	363.12
	31/12/00	295.20	367.57
5	31/03/01	297.39	372.08
	30/06/01	299.59	376.65
	30/09/01	301.81	381.27
	31/12/01	304.05	385.95
	31/03/02	306.31	390.69
10	30/06/02	308.58	395.48
	30/09/02	310.87	400.34
	31/12/02	313.17	405.25
	31/03/03	315.50	410.22
	30/06/03	317.84	415.26
15	30/09/03	320.19	420.35
	31/12/03	322.57	425.51
	31/03/04	324.96	430.73
	30/06/04	327.37	436.02
	30/09/04	329.80	441.37
20	31/12/04	332.25	446.79
	31/03/05	334.71	452.27
	30/06/05	337.19	457.82
	30/09/05	339.69	463.44
	31/12/05	342.21	469.13
25	31/03/06	344.75	474.88
	30/06/06	347.31	480.71
	30/09/06	349.88	486.61
	31/12/06	352.48	492.58
	31/03/07	355.09	498.63
30	30/06/07	357.73	504.75
	30/09/07	360.38	510.94
	31/12/07	363.05	517.21
	31/03/08	365.75	523.56
	30/06/08	368.46	529.98
35	30/09/08	371.19	536.49
	31/12/08	373.95	543.07
	31/03/09	376.72	549.74
	30/06/09	379.51	556.48
	30/09/09	382.33	563.31
40	31/12/09	385.16	570.23
	31/03/10	388.02	577.22
	30/06/10	390.90	584.31
	30/09/10	393.80	591.48
	31/12/10	396.72	598.74
45	31/03/11	399.66	606.08
	30/06/11	402.63	613.52
	30/09/11	405.61	621.05
	31/12/11	408.62	628.67
	31/03/12	411.65	636.39
50	30/06/12	414.70	644.20
	30/09/12	417.78	650.55
	31/12/12	420.88	656.96

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

	31/03/13	424.00	663.43
	30/06/13	427.15	669.97
	30/09/13	430.31	676.57
	31/12/13	433.51	683.23
5	31/03/14	436.72	689.97
	30/06/14	439.96	696.77
	30/09/14	443.22	703.63
	31/12/14	446.51	710.56
	31/03/15	449.82	717.57
10	30/06/15	453.16	724.64
	30/09/15	456.52	731.78
	31/12/15	459.91	738.99
	31/03/16	463.32	746.27
	30/06/16	466.75	753.62
15	30/09/16	470.22	761.05
	31/12/16	473.70	768.55
	31/03/17	477.22	776.12
	30/06/17	480.76	783.77
	30/09/17	484.32	791.49
20	31/12/17	487.91	799.29
	31/03/18	491.53	807.16
	30/06/18	495.18	815.12
	30/09/18	498.85	823.15
	31/12/18	502.55	831.26
25	31/03/19	506.28	839.45
	30/06/19	510.03	847.72
	30/09/19	513.82	856.07
	31/12/19	517.63	864.51
	31/03/20	521.47	873.03
30	30/06/20	525.34	881.63
	30/09/20	529.23	890.32
	31/12/20	533.16	899.09
	31/03/21	537.11	907.95
	30/06/21	541.10	916.90
35	30/09/21	545.11	925.93
	31/12/21	549.15	935.05
	31/03/22	553.22	944.27
	30/06/22	557.33	953.57
	30/09/22	561.46	962.97
40	31/12/22	565.63	972.46
	31/03/23	569.82	982.04
	30/06/23	574.05	991.71
	30/09/23	578.31	1001.49
	31/12/23	582.59	1011.35
45	31/03/24	586.92	1021.32
	30/06/24	591.27	1031.38
	30/09/24	595.65	1041.55
	31/12/24	600.07	1051.81

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

SCHEDULE 6

(Sec. 5)

THE NET BRIDGE REVENUE LOAN AGREEMENT

THIS AGREEMENT is made the 29th day of June, 1987

- 5 BETWEEN 1. THE COMMISSIONER FOR MAIN ROADS a corporation sole established pursuant to the State Roads Act 1986, of 309 Castlereagh Street, Sydney (the "Commissioner"); and
- 10 2. SYDNEY HARBOUR TUNNEL COMPANY LIMITED, a company incorporated in the State of New South Wales with its registered office at 100 Arthur Street, North Sydney (the "Company").

WHEREAS:

- A. Pursuant to obligations contained in the Lease the Company has agreed to design, construct and operate the Tunnel.
- 15 B. In consideration of the Company agreeing to design, construct and operate the Tunnel the Commissioner has agreed to make certain loans to the Company on the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 20 "Business Day" means any day on which trading banks are open for business in Sydney.
- "Crown" means The Honourable Laurence John Brereton Minister for Public Works and Ports and Minister for Roads for and on behalf of Her Majesty Queen Elizabeth the Second in Right of the State of New South Wales.
- 25 "Date of Completion" means the date on which the Tunnel is first opened to the public for the passage of vehicular traffic.
- "DMR Deed of Charge" means the deed of charge dated the same date as this Agreement between the Company as mortgagor and the Commissioner as mortgagee.
- 30 "ERS Agreement" means the Ensured Revenue Stream Agreement dated the same date as this Agreement between the Company and the Crown.
- "Government Agency" means any government or any governmental, semi governmental or judicial entity or authority.
- "Joint Venturers" means each of Transfield (SHTJV) Pty. Limited and Kumagai Gumi Co., Ltd. and "Joint Venturer" means either of them.
- 35 "Lease" means the lease between the Commissioner and the Company dated the same date as this Agreement.
- "Loans" means the loans made by the Commissioner pursuant to Clause 2.1.
- "Mortgagee" means any holder of a first ranking Security Interest over this Agreement who gives notice to the Commissioner pursuant to Clause 7.
- 40 "MSF Account" means the account of that name referred to in Clause 3.3 of the Operation, Repair and Maintenance Agreement.

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

“Operating Account” means the account of that name referred to in Clause 3.2 of the Operation, Repair and Maintenance Agreement.

“Operation, Repair and Maintenance Agreement” means the agreement so entitled dated the same date as this Agreement between the Commissioner and the Company.

“Relevant Company” means any party to a Relevant Document other than the Crown, the Commissioner, Perpetual Trustee Company Limited, Westpac Banking Corporation and the party providing the Performance Bond.

“Relevant Document” means each of:

- (a) this Agreement;
 - (b) the ERS Agreement;
 - (c) the Trust Deed;
 - (d) the Deed of Covenant between ACTL Holdings Pty. Limited, Kumagai Gumi Co., Ltd., Perpetual Trustee Company Limited and the Commissioner;
 - (e) the Lease;
 - (f) the Shareholder Loan and Equity Agreement between the Shareholder, the Company, Kumagai Gumi Co., Ltd. and ACTL Holdings Pty. Limited providing, amongst other things, for a loan of \$40,000,000 to the Company from the Shareholder;
 - (g) the Underwriting Agreement between the Company and Westpac Banking Corporation;
 - (h) the Design and Construction Agreement between the Company and the Joint Venturers;
 - (i) the Operation, Repair and Maintenance Agreement;
 - (j) the DMR Sub-contract between the Company and the Commissioner;
 - (k) the DMR Deed of Charge;
 - (l) the Performance Bond provided on behalf of the Joint Venturers in favour of the Company, in the amount of \$40,000,000;
 - (m) the Guarantee and Indemnity between Kumagai Gumi Co., Ltd., Transfield Pty. Limited and other companies in the Transfield group of companies, the Company and the Commissioner;
 - (n) the Subcontract Charge between Transfield Kumagai Contracting Pty. Limited and the Commissioner; and
 - (o) any other document or agreement which the parties to this Agreement agree is to be a Relevant Document for the purposes of this Agreement,
- and any document or agreement entered into under, or for the purpose of amending or novating, any of them.

“Security Interest” includes any mortgage, pledge or charge or any security or preferential interest or arrangement of any kind given by the Company.

“Senior Debt” means all money (other than the Loans) which the Company is or may become actually or contingently liable to pay on any account, including (without limitation) any money payable pursuant to any contractual obligation where such payment is conditional upon the performance by another person of an obligation owed to the Company.

“Senior Creditor” means any person to whom the Company owes Senior Debt.

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

“Shareholder” means Tunnel Holdings Pty. Limited.

5 “Special Account” means the account of the Company No. 032-099-88-9458 with Westpac Banking Corporation, 169 Miller Street, North Sydney or such other account as the Company and the Mortgagee notify the Commissioner in writing from time to time.

“Trust Deed” means the deed dated the same date as this Agreement under which the Company has granted a charge in favour of Perpetual Trustee Company Limited.

10 “Tunnel” means the whole of the permanent works to be designed and constructed on and in the Tunnel Site (as defined in the Lease), the scope of which works is set out in the Scope of Works and Design Criteria contained in Schedule 1 to the Lease.

1.2 Interpretation

In this Agreement headings are for convenience only and shall not affect its interpretation and except to the extent the context otherwise requires:

- (a) words denoting the singular number shall include the plural and vice versa;
- 15 (b) references to Clauses, Annexures and Schedules are references to clauses, annexures and schedules of this Agreement; and
- (c) references to any party to this Agreement or any other document or agreement shall include its successors or permitted assigns.

1.3 Business Days

20 If any payment is required to be made on a day which is not a Business Day, it shall be made on the preceding Business Day.

2. NET BRIDGE REVENUE LOANS

2.1 Loans

25 Subject to Clause 4, unless and to the extent that the Mortgagee otherwise agrees in writing, the Commissioner shall if requested by notice in writing from the Company make loans to the Company on each of the following dates in the following amounts:

DATE	AMOUNT
	\$m
30 10th July 1987	2.500
On the 10th day of each of the months	
from August 1987 until July 1988	inclusive 2.483
“ August 1988 until January 1989	” 2.550
“ February 1989 until July 1989	” 3.467
35 “ August 1989 until July 1990	” 3.983
“ August 1990 until July 1991	” 4.017
“ August 1991 until July 1992	” 4.142
10th August 1992	4.250
10th September 1992	4.248

40 The Loans will be paid into the Special Account.

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

2.2 Repayment

Subject to the terms of this Agreement and in particular to Clause 2.4 the Loans will become repayable on 31 December, 2022 or the determination of the Lease whichever is later.

5 2.3 Interest

The Loans will be interest free.

2.4 Funds for repayment

Subject to the terms of this Agreement the Loans will be repayable out of funds available as at the repayment date comprising:

- 10 (a) the amount uncalled or called and unpaid in respect of the four million ordinary shares of one dollar each issued paid as to one cent on the Date of Completion; and
- (b) the net assets of the Company excluding all funds in the Operating Account and all funds in the MSF Account as at the date of the repayment.

15 3. REPRESENTATIONS AND WARRANTIES

The Company makes the following representations and warranties for the benefit of the Commissioner as at the date of this Agreement.

- (a) (Status): It is a corporation validly existing under the laws of the State of New South Wales.
- 20 (b) (Corporate power): It has the corporate power to enter into and to perform its obligations under this Agreement and each other Relevant Document to which it is a party.
- (c) (Corporate authorisations): It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and each other Relevant Document to which it is a party.
- 25 (d) (Agreement binding): This Agreement and each other Relevant Document to which it is a party is a valid and binding obligation enforceable in accordance with its terms.
- (e) (Transaction permitted): Neither the execution and performance by it of this Agreement and each other Relevant Document to which it is a party nor any transaction contemplated under it or them will violate in any respect any provision of:
- 30 (i) any treaty or law or any judgment, ruling, order or decree of any Governmental Agency binding on it;
- 35 (ii) its memorandum or articles of association; or
- (iii) any other document or agreement which is binding upon it or its assets.
- (f) (No litigation): No litigation, arbitration, tax claim, dispute or administrative proceeding is current or pending or is, to its knowledge threatened against it or any of its assets.
- 40 (g) (Scope of business): It does not carry on any business other than that necessary to comply with its obligations under the Relevant Documents.

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

4. CONDITIONS PRECEDENT

The obligation of the Commissioner to provide the Loans is subject to the condition that he has received, in form and substance satisfactory to him, the following prior to the making of the first Loan:

- 5 (a) (Memorandum and Articles): a certified copy of the Memorandum and Articles of Association of each Relevant Company;
- (b) (Corporate authorisations): a certified copy of all corporate authorisations of each Relevant Company required for the execution and performance of each Relevant Document to which it is a party;
- 10 (c) (Relevant Documents): a certified copy or, in the case of any Relevant Document to which the Company is a party, the original, of each duly executed, stamped and, where relevant, registered Relevant Document;
- (d) (Capital contribution): evidence that the Shareholder has contributed an initial
15 \$200,000 capital to the Company, and is bound and will have the financial means to contribute additional capital of \$6,800,000;
- (e) (No default): a certificate from a director of the Company that no Relevant Company is in default under any Relevant Document to which it is a party;
- (f) (Maritime Services Board): evidence that the Maritime Services Board has granted
20 or will grant a lease of the land described in Schedule 4 to the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 and a licence for, amongst other things, access to the Port Jackson harbour bed; and
- (g) (Special Account): evidence that the Special Account has been established and that the acts, matters and things required to be done to ensure that withdrawals
25 from the Special Account may only be made with the consent of the Commissioner in accordance with Clause 5.2 of the Trust Deed have been done.

5. OBLIGATION OF COMMISSIONER ABSOLUTE AND UNCONDITIONAL

- 5.1 Subject to Clause 4 the obligation of the Commissioner to make Loans to the Company under Clause 2 shall be free from any right of set-off, shall be absolute, unconditional and irrevocable and shall not be affected by any default, event of force
30 majeure or other event or circumstance which otherwise would or might at law terminate or permit termination of this Agreement or any of its provisions, or excuse compliance with or performance of or provide a defence to any proceedings to enforce the Commissioner's obligations under this Agreement. The obligations of the Commissioner shall not be terminated on account of any such matter or thing and shall be enforceable
35 notwithstanding any such matter or thing.

5.2 Without limiting the generality of Clause 5.1 the obligations of the Commissioner under Clause 2 shall not be affected by the occurrence of any of the following:

- (a) the Tunnel not commencing operations or operating continuously;
- (b) the Tunnel not having been completed;
- 40 (c) the Tunnel not being constructed;
- (d) any interruption or cessation in the operation either in whole or part of the Sydney Harbour Bridge;
- (e) the failure of the Commissioner to receive any money in the form of tolls from the operation of the Sydney Harbour Bridge;

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (f) the existence, currency or enforceability or legality of any agreement, arrangement or understanding whether oral or in writing between any persons in any way connected with the construction or operation of the Tunnel;
- 5 (g) any breach or alleged breach by any person of the terms of any such agreement, arrangement or understanding; or
- (h) the cessation of the existence of any party to any such agreements, arrangements or understandings.

6. SUBORDINATION

10 6.1 The Loans will be subordinated to the payment of all Senior Debt of the Company and accordingly the Commissioner will not claim or receive from the Company by set off or in any other manner any part of the Loans until all Senior Debt has been paid.

15 6.2 In the event of any payment or distribution of assets of the Company in cash or in kind upon any dissolution, winding up, liquidation or reorganisation of the Company, the Senior Creditors shall first be entitled to receive payment in full of their indebtedness before the Commissioner receives any payment in respect of the Loans.

6.3 Any distribution to which the Commissioner would be entitled but for the provisions of this Agreement shall be paid or delivered by the liquidator directly to the Senior Creditors rateably according to their indebtedness until they have been paid in full.

20 6.4 If notwithstanding Clause 6.2 any distribution is received by the Commissioner in respect of the Loans such distribution shall be paid over to the Senior Creditors for application rateably against their Senior Debt until the Senior Debt has been paid in full and until such payment in full shall be held in trust by the Commissioner for the Senior Creditors. For the purposes of this Clause the Commissioner may rely on a
25 certificate from the Mortgagee as to the identity of Senior Creditors and the amount of their Senior Debt.

30 6.5 Without prejudice to the Company's obligations under the DMR Deed of Charge, the Company shall not without the prior written consent of the Commissioner enter into any contract or arrangement or otherwise incur obligations (whether present or future, actual or contingent) of any kind whatsoever (including, without limitation, any sub-contract of its obligations under the Operation, Repair and Maintenance Agreement) otherwise than on terms appropriate to an arms length commercial transaction in the ordinary course of the Company's business or by virtue of which the Company's ability to repay the Loans in accordance with Clause 2.2 will or may be prejudiced.

35 6.6 Notwithstanding anything else in this Agreement the Loans shall only be repayable if the Commissioner has made all Loans which it is required to make under Clause 2.1 and if those Loans have been paid into the Special Account.

7. COMPANY'S RIGHT TO GIVE SECURITY INTEREST OVER THIS AGREEMENT

40 For the purpose of securing its obligations to any person or persons providing financial accommodation to it, the Company may give a Security Interest over this Agreement and its rights to receive Loans. Where any person holding such a Security Interest gives notice of its interest to the Commissioner no amendment to this Agreement and no waiver of the performance of any of the obligations of the Commissioner under this
45 Agreement shall be effective unless approved in writing by the Mortgagee.

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

8. PROHIBITION ON ASSIGNMENTS

Neither the Company nor the Commissioner may sell, assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the other of them and the Mortgagee. If such consent is given this Agreement shall be binding upon and inure to the benefit of each party and its respective successors and assigns.

9. WAIVER OF IMMUNITY

The Commissioner waives its immunity (if any) under any act or rule of law from legal proceedings or proceedings by way of arbitration which may be instituted against the Commissioner in the enforcement of this Agreement, notwithstanding any act or rule of law to the contrary.

10. NOTICES

Any notice, approval, consent or other communication given or made to or by a party under this Agreement shall be in writing delivered to the address or sent to the telex number or facsimile number of the recipient shown below or to such other address, telex number or facsimile number as the recipient may have notified the sender and shall be deemed to be duly given or made:

(a) (in the case of delivery in person or by facsimile transmission) when delivered to the recipient at such address or facsimile number; or

(b) (in the case of telex) on receipt by the sender of the answerback code of the recipient at the end of transmission.

(i) The Commissioner:

The Commissioner for Main Roads,
4th Floor, 309 Castlereagh Street,
Sydney, N.S.W. 2000
Telex No: AA121825
Facsimile: (02) 218 6794

(ii) The Company:

Sydney Harbour Tunnel Company Limited,
3rd Floor, 100 Arthur Street,
North Sydney, N.S.W. 2060
Telex No: AA21396 Answerback: TRANSHO
Attention: The Secretary
Facsimile: (02) 922 2834

11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of New South Wales.

IN WITNESS the parties have executed this Agreement on the date first written on page 1 of this Agreement.

I, BERNARD GODFREY FISK
THE COMMISSIONER FOR MAIN
ROADS hereunto affix the official Seal of
the Commissioner for Main Roads in the
presence of:

BERNARD GODFREY FISK

DAVID J. TAYLOR

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

SIGNED for and on behalf of SYDNEY
HARBOUR TUNNEL COMPANY
LIMITED by TADAO MITANI and
CARLO SALTERI its Attorneys under
5 Power of Attorney dated 29 June, 1987
in the presence of:

TERENCE BURKE

} By his signing of this Agreement each
Attorney states that at the time of signing
he has received no notice of revocation of
the Power of Attorney pursuant to which
he so signs

TADAO MITANI
Attorney

CARLO SALTERI
Attorney

10

**SYDNEY HARBOUR TUNNEL (PRIVATE JOINT
VENTURE) AMENDMENT ACT 1987 No. 245**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Amendment of Act No. 49, 1987

SCHEDULE 1—AMENDMENTS

THE UNIVERSITY OF CHICAGO
LIBRARY

1967

1967

1967



**SYDNEY HARBOUR TUNNEL (PRIVATE JOINT VENTURE)
AMENDMENT ACT 1987 No. 245**

NEW SOUTH WALES



Act No. 245, 1987

An Act to amend the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 so as to ratify and approve certain agreements entered into under that Act. [Assented to 16 December 1987]

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Sydney Harbour Tunnel (Private Joint Venture) Amendment Act 1987.

Amendment of Act No. 49, 1987

2. The Sydney Harbour Tunnel (Private Joint Venture) Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 2)

(1) Section 2 (**Interpretation**)—

Section 2 (2) (e), (f)—

Omit “an agreement that is substantially in or to the effect of the form of” wherever occurring, insert instead “the”.

(2) Section 5—

Omit the section, insert instead:

Ratification and approval of certain agreements

5. The Ensured Revenue Stream Agreement and the Net Bridge Revenue Loan Agreement are ratified and approved.

(3) Section 6 (**Commissioner authorised to exercise functions under the Net Bridge Revenue Loan Agreement etc.**)—

(a) Section 6 (1)—

Omit “may enter into, and”.

(b) Section 6 (1)—

Omit “by,”, insert instead “by”.

(4) Schedules 5, 6—

Omit the Schedules, insert instead:

SCHEDULE 5

(Sec. 5)

THE ENSURED REVENUE STREAM AGREEMENT

THIS AGREEMENT is made the 29th day of June, 1987,

BETWEEN 1. THE HONOURABLE LAURENCE JOHN BRERETON Minister for Public Works and Ports and Minister for Roads for and on behalf of HER MAJESTY QUEEN ELIZABETH THE SECOND IN RIGHT OF THE STATE OF NEW SOUTH WALES (the “*Crown*”); and

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

2. SYDNEY HARBOUR TUNNEL COMPANY LIMITED, a company incorporated in the State of New South Wales with its registered office at 100 Arthur Street, North Sydney (the "Company").

WHEREAS:

- A. Pursuant to obligations contained in the Lease the Company has agreed to design, construct and operate the Tunnel.
- B. In consideration of the Company agreeing to design, construct and operate the Tunnel, the Crown has agreed to make the payments set out in this Agreement to the Company to enable the Company to meet financial obligations in connection with the operation of the Tunnel and the payment of principal and interest upon moneys borrowed by it for the design, construction and operation of the Tunnel.

NOW THIS AGREEMENT WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

When used in this Agreement the following terms shall have the following meanings unless the context otherwise requires:

"Bridge Toll Collection Costs" means the sum of \$600,000 multiplied by a fraction the numerator of which is the CPI for the calendar quarter immediately preceding the calculation and the denominator of which is the CPI for the quarter ending 30th June 1986.

"Business Day" means any day on which trading banks are open for business in Sydney.

"Commissioner" means the Commissioner for Main Roads.

"CPI" means:

- (i) the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" published quarterly by the Australian Bureau of Statistics as long as there is no change in the coverage, periodicity or reference base from that applying at the date of this Agreement;
- (ii) if such Index is published and there is a change in coverage and the Index is linked to previous CPI's, such Index shall be the CPI;
- (iii) if such Index is revised to a new base and a conversion factor to apply to the old Index to make it comparable with the new Index is provided, then the conversion factor shall be applied to all previous CPI's as published or otherwise revised in terms of this Agreement to calculate revised CPI's in terms of the new reference base;
- (iv) if such Index is revised to a new base and a conversion factor to apply to the old Index to make it comparable with the new Index is not provided then the President of the Institute of Actuaries of Australia (or, if such Institute has ceased to exist, such other institute or body as then carries on the functions of such Institute), or his nominee, acting as an arbitrator (the "Arbitrator") shall be called upon to calculate revised CPI's for all CPI's as published or otherwise revised in terms of this Agreement and the Arbitrator's determination shall be conclusive;
- (v) if such Index is published but:

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

(A) there is a change in coverage and the Index is not linked to previous CPI's;
or

(B) there is a change in periodicity,

then the Arbitrator shall be called upon to decide whether such Index is appropriate as a general indicator of the rate of price change for consumer goods and services in the capital cities of Australia or, if it is not, what other index shall be used as a substitute index for the purpose of calculating the payments due under this Agreement and the Arbitrator's determination shall be conclusive;

- (vi) if there is a cessation in the publication of such Index and the Australian Bureau of Statistics publishes another Index which it states to be in replacement of such Index and the replacement Index is linked to old CPI's then all CPI's relevant to this Agreement shall be recalculated to the same reference base as the replacement Index;
- (vii) if there is a cessation in the publication of such Index and the Australian Bureau of Statistics publishes another Index which it states to be in replacement of such Index but the replacement Index is not linked to old CPI's then the Arbitrator shall be called upon to calculate revised CPI's for all previous CPI's as published or otherwise revised in terms of this Agreement and the Arbitrator's calculation shall be conclusive;
- (viii) if there is a cessation in the publication of such Index and the Australian Bureau of Statistics does not publish another Index in replacement of such Index then the Arbitrator shall be called upon to provide an index which he determines to be appropriate as a general indicator of the rate of price change for consumer goods and services in the capital cities of Australia and the Arbitrator's determination shall be conclusive.

"Environmental Impact Determination" means the determinations of the Commissioner dated 29th May 1987 and made under the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 and Part V of the Environmental Planning and Assessment Act 1979 in respect of the works referred to in Schedules 1 and 2 to the Sydney Harbour Tunnel (Private Joint Venture) Act 1987.

"ERS Toll" means:

- (i) from 1st September, 1992 until 30th June, 1993 inclusive—\$1.00;
- (ii) from 1st July, 1993 until 30th June, 2015 inclusive—\$1.03; and
- (iii) from 1st July, 2015 until 31st August, 2022—88 cents.

"Immersed Tube Section of the Tunnel" means the eight pre-cast concrete segments of the Tunnel to be constructed in the dry dock situated on the land described in Schedule 4 to the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 and to be placed on the bed of Port Jackson.

"Joint Venturers" means each of Transfield (SHTJV) Pty. Limited and Kumagai Gumi Co., Ltd. and "Joint Venturer" means either one of them.

"Lease" means the Lease dated the date of this Agreement between the Commissioner and the Company.

"Mortgagee" means any holder of a first ranking Security Interest over this Agreement who gives notice to the Crown pursuant to Clause 6.

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987***SCHEDULE 1—AMENDMENTS—*continued***

“Notional Crew” means a notional representative labour force comprising one of each of the following classifications subject to the following awards respectively (except that if any one or more of the nominated awards do not apply to the particular classification then such award as is applicable to that classification shall apply):

Classification	Award
Electrician (Licensed)	Electricians and C State Award
Mechanic (Tradesman)	Metal Industry Award
Painter	National Building Trades Construction Award
Clerk Grade 1	Clerks (State) Award.

“Projected Traffic Volume” means during each of the periods set out in Schedule 1, one quarter of the figure set out in the right hand column.

“Relevant Company” means any party to a Relevant Document other than the Crown, the Commissioner, Perpetual Trustee Company Limited, Westpac Banking Corporation and the party providing the Performance Bond.

“Relevant Document” means each of:

- (a) this Agreement;
- (b) the Net Bridge Revenue Loan Agreement dated the date of this Agreement between the Commissioner and the Company;
- (c) the Trust Deed dated the same date as this Agreement under which the Company has granted a charge in favour of Perpetual Trustee Company Limited;
- (d) the Deed of Covenant between ACTL Holdings Pty. Limited, Kumagai Gumi Co., Ltd., Perpetual Trustee Company Limited and the Commissioner;
- (e) the Lease;
- (f) the Shareholder Loan and Equity Agreement between the Shareholder, the Company, Kumagai Gumi Co., Ltd. and ACTL Holdings Pty. Limited providing, amongst other things, for a loan of \$40,000,000 to the Company from the Shareholder;
- (g) the Underwriting Agreement between the Company and Westpac Banking Corporation;
- (h) the Design and Construction Agreement between the Company and the Joint Venturers;
- (i) the Operation, Repair and Maintenance Agreement between the Company and the Commissioner;
- (j) the DMR Sub-contract between the Company and the Commissioner;
- (k) the Deed of Charge in favour of the Commissioner given by the Company;
- (l) the Performance Bond provided on behalf of the Joint Venturers in favour of the Company, in the amount of \$40,000,000;
- (m) the Guarantee and Indemnity between Kumagai Gumi Co., Ltd., Transfield Pty. Limited and other companies in the Transfield group of companies, the Company and the Commissioner;
- (n) the Subcontract Charge between Transfield Kumagai Contracting Pty. Limited and the Commissioner; and

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

- (o) any other document or agreement which the parties to this Agreement agree is to be a Relevant Document for the purposes of this Agreement, and any document or agreement entered into under, or for the purpose of amending or novating, any of them.
- “Security Interest” includes any mortgage, pledge or charge or any security or preferential interest or arrangement of any kind given by the Company.
- “Shareholder” means Tunnel Holdings Pty. Limited.
- “Special Account” means the account of the Company No. 032-099-88-9458 with Westpac Banking Corporation, 169 Miller Street, North Sydney or such other account as the Company and the Mortgagee notify the Crown in writing from time to time.
- “Tax Act” means the Income Tax Assessment Act 1936.
- “Tunnel” means the whole of the permanent works to be designed and constructed on and in the Tunnel Site (as defined in the Lease), the scope of which works is set out in the Scope of Works and Design Criteria contained in Schedule 1 to the Lease.
- “Tunnel Toll Receipts” means the gross toll receipts of the Company paid into the Special Account from the operation of the Tunnel during the calendar quarter immediately preceding the date on which any calculation is made as certified by the Company’s auditors.
- “Weighted Index” means:
- (i) for the period beginning on 1st September, 1992 and expiring on 30th June, 1993—two; and
 - (ii) after that date the amount calculated in accordance with the following formula:

Weighted Index

$$= \left(d \times \frac{\text{CPI}^H}{\text{CPI}^1} \right) + \left(e \times \frac{\text{CPI}^2}{\text{CPI}^1} \right) + \left(f \times \frac{\text{WI}^2}{\text{WI}^1} \right) + \left(g \times \frac{\text{EI}^2}{\text{EI}^1} \right)$$

where

$$e = (T \times A) / [A + B + C]$$

$$f = (T \times B) / [A + B + C]$$

$$g = (T \times C) / [A + B + C]$$

$$d = 1 - (e + f + g)$$

$$A = AA \times \frac{\text{CPI}^1}{\text{CPI}^3}$$

$$B = BB \times \frac{\text{WI}^1}{\text{WI}^3}$$

$$C = CC \times \frac{\text{EI}^1}{\text{EI}^3}$$

CPI^H is the highest CPI for any quarter between the quarter ended 30 June 1986 and the last full calendar quarter prior to the date on which the calculation of Weighted Index is being made (referred to in this definition of “Weighted Index” as the “last calendar quarter”).

CPI^2 is the CPI for the last calendar quarter.

CPI^3 is the CPI for the calendar quarter immediately preceding the last calendar quarter.

CPI^1 is the CPI for the quarter ended 30 June 1986.

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

- WI² is the cost of employment of the Notional Crew for the last calendar quarter.
 WI³ is the cost of employment of the Notional Crew for the calendar quarter immediately preceding the last calendar quarter.
 WI¹ is the cost of employment of the Notional Crew for the calendar quarter ended 30 June 1986.
 EI² is the bulk supply tariff as published in the latest Annual Report of the Electricity Commission of the New South Wales for the last calendar quarter or if such tariff is not published, is the value of the product of EI¹ and CPI² divided by CPI¹.
 EI³ is the bulk supply tariff as published in the latest Annual Report of the Electricity Commission of New South Wales for the calendar quarter immediately preceding the last calendar quarter or if such tariff is not published, is the value of the product of EI¹ and CPI³ divided by CPI¹.
 EI¹ is the bulk supply tariff as published in the Annual Report of the Electricity Commission of New South Wales for the year ended 30 June 1986 namely 5.2224 cents per kilowatt hour.
 AA is the percentage of actual operating expenditure of the Company incurred during the last calendar quarter, as certified by its auditors, remaining after deducting the sum of percentages calculated for BB and CC below.
 BB is the percentage of the actual operating expenditure of the Company incurred during the last calendar quarter, as certified by its auditors, attributable to the cost of employment of the Company's personnel.
 CC is the percentage of the actual operating expenditure of the Company incurred during the last calendar quarter, as certified by its auditors, attributable to the provision of electricity.
 T is \$2,600,000 divided by the product of the Projected Traffic Volume for the last calendar quarter and the ERS Toll for the last calendar quarter.

1.2 Interpretation

In this Agreement headings are for convenience only and shall not affect its interpretation and except to the extent the context otherwise requires:

- (a) words denoting the singular number shall include the plural and vice versa;
- (b) references to Clauses, Annexures and Schedules are references to them in and to this Agreement.

1.3 Calculation

All calculations under this Agreement shall be rounded upwards to the nearest \$100 and all intermediate calculations shall be made to 4 decimal places unless otherwise stated.

1.4 Business Days

If any payment is required to be made on a day which is not a Business Day, it shall be made on the preceding Business Day.

2. ENSURED REVENUE STREAM

2.1 Ensured Revenue Stream

The Crown grants the Company, unless and to the extent that the Mortgagee otherwise agrees in writing, the right to receive an amount calculated in accordance with the following formula and undertakes to make payment to the Company of such amount in the manner referred to in Clause 2.2:

$$\text{Amount payable} = (\text{ERS Toll} \times \text{Projected Traffic Volume} \times \text{Weighted Index}) - (\text{Tunnel Toll Receipts} + \text{Bridge Toll Collection Costs}).$$

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

Each such payment (referred to in this Agreement as an “Ensured Revenue Stream Payment”) shall be made to the Special Account.

2.2 Calculation of Amount Payable and Payment

(a) (First Payment of ERS)

Not later than 1st October 1992 the Company shall provide the Crown with a statement showing the calculation of the amount of the first Ensured Revenue Stream Payment which shall be paid on 10th October 1992. The amount shall be based upon the CPI for the calendar quarter ending on 30th June 1992 and shall be one third of the amount calculated by applying the formula contained in Clause 2.1.

(b) (Adjustment of First Payment)

(i) By 1st November 1992 or as soon thereafter as possible after the CPI for the calendar quarter ended 30th September 1992 becomes available the Company shall provide the Crown with a further statement showing the calculation of the amount of the first Ensured Revenue Stream Payment based on the actual CPI for the calendar quarter ending on 30th September 1992 and, where any other variable in the formula in Clause 2.1 (including any variable in the definition of Weighted Index) was, for the purpose of calculating the payment under paragraph (a), calculated by reference to the calendar quarter ended 30th June 1992 (referred to in this Clause 2.2 as a “Past Period Variable”), based on the actual figure for that variable for the quarter ended 30th September 1992.

(ii) The adjustment to the 10th October 1992 payment referred to in Clause 2.2 (a) required by such further statement shall be made on 10th November 1992 by the Crown making a payment to the Company of the relevant amount or deducting the relevant amount from any Ensured Revenue Stream Payment to be made on that date. If however the CPI for the calendar quarter ended 30th September 1992 or the actual figure for any other Past Period Variable for that quarter is not available by 5th November 1992, then in calculating the adjustment, if any, to be made, the CPI or relevant Past Period Variable shall be that used for the purpose of calculating the payment under paragraph (a).

(c) (Subsequent monthly payments of ERS)

Within 32 days after the end of each calendar quarter for which the CPI is calculated after 30th September 1992 up to and including the calendar quarter ended 31st March 2022 the Company shall provide the Crown with a statement showing the calculation of the amount of the Ensured Revenue Stream Payments to be made by the Crown based upon the CPI applicable to the calendar quarter most recently ended. On the 10th day of the 2nd, 3rd and 4th months after the month in which such quarter ends, the Crown shall pay one third of the amount stated in the statement.

(d) (Adjustment of subsequent monthly payments of ERS)

Once the CPI for each calendar quarter is known (by whichever of the means referred to in the definition of CPI in Clause 1.1) all Ensured Revenue Stream Payments by the Crown not already adjusted pursuant to this Clause 2.2 will require adjustment as each payment will have been made upon the basis of the CPI and other Past Period Variables for a preceding calendar quarter rather than on the basis of the CPI and other Past Period Variables calculated in respect of

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

the calendar quarter during which the payments were made. Accordingly, on each occasion the Company delivers a statement showing calculations of the amount of payments to be made by the Crown pursuant to Clause 2.2 (c) and on the day the Company delivers a statement under Clause 2.2 (e) it shall also deliver a statement (an "Adjustment Statement") showing revised calculations of the Ensured Revenue Stream Payments which would have been payable in respect of the 4th, 3rd and 2nd most recent months if based on the actual CPI for the quarter containing those months and on such of the actual figures for the Past Period Variables as are then available for those months. An adjustment, being the difference between the amount paid and the amount shown in the Adjustment Statement in respect of each such month, shall be made on the next date on which the Crown is obliged to make a payment under Clause 2.2 (c) or 2.2 (e), as appropriate, by increasing or decreasing that payment, as appropriate. If the actual figure for any Past Period Variable is not available 5 days before the date on which any Adjustment Statement is to be delivered then, in calculating the adjustment, if any, to be made under this paragraph, the relevant Past Period Variable shall be that used for the purpose of calculating the payment in respect of each such month under paragraph (c).

(e) (Final ERS payments)

- (i) On 1st August 2022 the Company shall provide the Crown with a statement showing:
 - (A) a calculation of the amount of the Ensured Revenue Stream Payments to be made by the Crown based upon an estimate of the CPI for the calendar quarter to end on 30th September 2022; and
 - (B) a revised calculation of the adjustment to be paid pursuant to Clause 2.2 (d) on 10th August 2022 based upon the CPI and such of the actual figures for the Past Period Variables as are then available for the calendar quarter ended 30th June 2022.
- (ii) On 10th August, 2022 the Crown shall pay one third of the amount shown in the statement under (i)(A) above together with any adjustment in relation to (i)(B) above and on 10th September 2022 the Crown shall pay one third of the amount shown in the statement under (i)(A) above.
- (iii) For the purpose of (i) above, the estimate by the Company of the CPI for the calendar quarter to end on 30th September 2022 shall be the CPI for the calendar quarter ended 30th June 2022 divided by the CPI for the calendar quarter ended 31st March 2022 and the product thereof shall be multiplied by the CPI for the calendar quarter ended 30th June 2022.

2.3 Artificial CPI's

If CPI^2 is unavailable for any reason within 32 days of the end of the relevant calendar quarter, then the Ensured Revenue Stream Payment based upon each calendar quarter for which the CPI is calculated after 30th September 1992 up to and including the calendar quarter ended 31st March 2022 shall be calculated in terms of Clause 2.2 (c) except that CPI^3 for the relevant calendar quarter shall be used in place of CPI^2 .

If CPI^2 does not become available for any reason within 75 days of the end of the relevant calendar quarter, then the President of the Institute of Actuaries of Australia (or, if such Institute has ceased to exist, such other institute or body as then carries on the functions of such Institute), or his nominee, acting as an arbitrator (the "Arbitrator") shall be called upon to calculate an artificial CPI^2 within 42 days of request, which calculation shall be conclusive.

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

If CPI² becomes available within 120 days of the end of the relevant calendar quarter, then that CPI² shall be used to calculate adjustments to previously made Ensured Revenue Stream Payments and the appropriate adjustments shall be payable on the next monthly payment date.

If upon the expiration of 120 days from the end of the relevant calendar quarter no CPI² has become available, that artificial CPI² as calculated by the Arbitrator shall become CPI² for that relevant calendar quarter.

The artificial CPI² shall then be used for the calculation of adjustments to the previously made Ensured Revenue Stream Payments and the appropriate adjustments shall be payable on the next monthly payment date.

If CPI² is subsequently published by the Australian Bureau of Statistics for a quarter in respect of which an artificial CPI² calculated under this Clause has been applied to calculations and Ensured Revenue Stream Payments, then no adjustment to past Ensured Revenue Stream Payments shall be made but such published CPI² shall apply for all other purposes of this Agreement.

Any reference in this Clause 2.3 to CPI² and CPI³ shall be a reference to those expressions as defined in the definition of "Weighted Index."

2.4 Reduction in Ensured Revenue Stream Payment

If:

- (a) operations of the Tunnel do not commence on or before 1st September 1992 for any reason;
- (b) at any time after operation of the Tunnel has commenced it is closed for a period or periods exceeding seven consecutive days; or
- (c) savings in the cost of the ventilation system for the Tunnel are possible as a result of revised estimates of exhaust emission rates per vehicle,

the Company shall determine the savings in operating expenses (excluding financing expenses and tax provisions) resulting from such non-commencement, closure or savings in cost and, provided the consent of the Mortgagee is endorsed on the relevant notice, notify the Crown of the amount of such savings. The next succeeding Ensured Revenue Stream Payment by the Crown may at the discretion of the Crown be reduced by an amount not greater than the amount so notified.

2.5 Conditions Precedent

The obligation of the Crown to make Ensured Revenue Stream Payments is subject to the condition that it has received, in form and substance satisfactory to it, the following prior to the making of the first payment:

- (a) (Memorandum and Articles): a certified copy of the Memorandum and Articles of Association of each Relevant Company;
- (b) (Corporate authorisations): a certified copy of all corporate authorisations of each Relevant Company required for the execution and performance of each Relevant Document to which it is a party;
- (c) (Relevant Documents): a certified copy or, in the case of any Relevant Document to which the Company is a party, the original, of each duly executed, stamped and, where relevant, registered Relevant Document;

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

- (d) (Capital contribution): evidence that the Shareholder has contributed an initial \$200,000 capital to the Company, and is bound and will have the financial means to contribute additional capital of \$6,800,000; and
- (e) (Maritime Services Board): evidence that the Maritime Services Board has granted or will grant a lease of the land described in Schedule 4 to the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 and a licence for, amongst other things, access to the Port Jackson harbour bed.

3. OBLIGATIONS OF CROWN ABSOLUTE AND UNCONDITIONAL

3.1 The obligation of the Crown to make Ensured Revenue Stream Payments to the Company shall, subject to Clauses 2.4 and 2.5, be free from any right of set-off, shall be absolute, unconditional and irrevocable and shall not be affected by any default, event of force majeure or other event or circumstance which otherwise would or might at law terminate or permit termination of this Agreement or any of its provisions, or excuse compliance with or performance or provide a defence to any proceedings to enforce the Crown's obligations under this Agreement. The obligations of the Crown shall not be terminated on account of any such matter or thing and shall be enforceable notwithstanding any such matter or thing.

3.2 Without limiting the generality of Clause 3.1 the obligations of the Crown to make Ensured Revenue Stream Payments shall subject to Clauses 2.4 and 2.5 not be affected by the occurrence of any of the following:

- (i) the Tunnel not commencing operations or operating continuously;
- (ii) the Tunnel not having been completed;
- (iii) the Tunnel not being constructed;
- (iv) any interruption or cessation in the operation either in whole or part of the Sydney Harbour Bridge;
- (v) the failure of the Crown to receive any money in the form of tolls from the operation of the Sydney Harbour Bridge;
- (vi) the existence, currency or enforceability or legality of any agreement, arrangement or understanding whether oral or in writing between any persons in any way connected with the construction or operation of the Tunnel;
- (vii) any breach or alleged breach by any person of the terms of any such agreement, arrangement or understanding; or
- (viii) the cessation of the existence of any party to any such agreements, arrangements or understandings.

4. RENEGOTIATION

4.1 Renegotiation Events—General

Where one of the following events occurs either party may give notice (in the case of paragraph (c) below within 10 Business Days of receipt of the relevant income tax assessment, in which respect time shall be of the essence) to the other, which notice will only be validly given if the consent of the Mortgagee is endorsed on the notice, that it wishes to alter the Ensured Revenue Stream Payments. The events are as follows:

- (a) A material unforeseen increase or decrease in the cost of operating the Tunnel (excluding increases in financing costs and tax provisions) occurs as a result of circumstances beyond the reasonable control of the Company (including, without limitation, any change in the law of New South Wales except for awards of industrial tribunals);

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (b) the CPI is on any of the dates specified in Schedule 2 less than the corresponding figure in Column 1 or greater than the corresponding figure set out in Column 2 of such Schedule; or
- (c) the Company or a company which is a group company of the Company pursuant to Section 80G of the Tax Act receives an income tax assessment to the effect that its claim for a deduction from its assessable income for depreciation on the Immersed Tube Section of the Tunnel is denied and/or to the effect that tax losses (to the extent that these relate to such depreciation) are denied.

4.2 Amount of Adjustment to ERS Payment

Promptly upon the receipt of a valid notice arising from one of the events set out in Clauses 4.1 (a), (b) or (c) above the amount payable pursuant to Clause 2.1 shall be amended and an adjustment shall be made. The adjustment shall be as follows:

- (a) Where the notice is given pursuant to Clause 4.1 (a) and there is an increase in the cost of operating the Tunnel the Crown shall pay to the Company the amounts certified by the Company's auditors in such notice as being the amount of the increase. Where there is a decrease the Company shall refund to the Crown the amount so determined by the Company's auditors.
- (b) (i) Where the notice is given pursuant to Clause 4.1 (b) as a result of the CPI on any of the dates specified in Part A of Schedule 2 being less than the corresponding figure in Column 1 of Part A of Schedule 2 then not later than 1st October 1992 the Company's auditors shall prepare a statement showing the following calculation:

$$Z = \left(\frac{146}{\text{CPI}^6} + \frac{160}{\text{CPI}^7} + \frac{189}{\text{CPI}^8} + \frac{247}{\text{CPI}^9} + \frac{218}{\text{CPI}^{10}} + \frac{174}{\text{CPI}^{11}} + \frac{117}{\text{CPI}^{12}} + \frac{164}{\text{CPI}^{13}} - \frac{1065}{\text{CPI}^1} \right) \times \$1,000,000 \times \frac{\text{CPI}^{14}}{153}$$

where

CPI⁶ is the CPI for the full calendar quarter ending 31st December 1988

CPI⁷ is the CPI for the full calendar quarter ending 30th June 1989

CPI⁸ is the CPI for the full calendar quarter ending 31st December 1989

CPI⁹ is the CPI for the full calendar quarter ending 30th June 1990

CPI¹⁰ is the CPI for the full calendar quarter ending 31st December 1990

CPI¹¹ is the CPI for the full calendar quarter ending 30th June 1991

CPI¹² is the CPI for the full calendar quarter ending 31st December 1991

CPI¹³ is the CPI for the full calendar quarter ending 30th June 1992

CPI¹⁴ is the highest CPI for any full calendar quarter between the quarter ended 30 June 1986 and the last calendar quarter prior to the date on which the calculation of Z is being made

CPI¹ is the CPI for the full calendar quarter ended 30 June 1986.

If Z is greater than zero then all Ensured Revenue Stream Payments shall be adjusted by the addition of an amount equal to Z as calculated each quarter. If Z is less than or equal to zero then no adjustment shall be made under this sub-paragraph (i) to any Ensured Revenue Stream Payment.

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (ii) Where the notice is given pursuant to Clause 4.1 (b) as a result of the CPI on any of the dates specified in Part B of Schedule 2 (a "Quarter End Date") being less than the corresponding figure in Column 1 of Part B of Schedule 2 the Crown shall in addition to the amount, if any, payable under subparagraph (i) pay to the Company the amount certified by the Company's auditors as being the difference between:
 - (A) the amount payable by the Crown under Clause 2.1 calculated using the CPI^H (as defined in the definition of "Weighted Index" in Clause 1.1) applicable to the calendar quarter ended on the relevant Quarter End Date; and
 - (B) the amount which would have been payable by the Crown under Clause 2.1 if, in the calculation of Weighted Index, CPI^H was the figure set out in Column 1 of Part B of Schedule 2 opposite the relevant Quarter End Date.
- (iii) Where the notice is given pursuant to Clause 4.1 (b) as a result of the CPI on any of the dates specified in Schedule 2 being greater than the corresponding figure set out in Column 2 of Schedule 2 the Company shall refund to the Crown the amount certified by the Company's auditors in such notice as being the net increase in expected revenue to the Company.
- (c) Where the notice is given pursuant to Clause 4.1 (c) the following provisions shall apply:
 - (i) The Company (at the written request of the Crown) shall contest such assessment by lodging an objection against such assessment with the Commissioner of Taxation within the time required by Section 185 of the Tax Act. Such objection shall contain, amongst other things, such grounds as the Crown shall reasonably request in writing.
 - (ii) If any such objection shall be disallowed in whole or in part by the Commissioner of Taxation, the Company shall promptly (and, in any event, within 5 Business Days after becoming aware) serve notice of such disallowance upon the Crown, and (at the written request of the Crown) shall either (at the option of the Crown) lodge a request for reference to the Administrative Appeals Tribunal or refer the objection to the Supreme Court of a specified State or Territory or the Federal Court.
 - (iii) If any reference to the Administrative Appeals Tribunal is decided against the Company, the Company (at the written request of the Crown) shall refer the objection to the Supreme Court of a specified State or Territory or the Federal Court, as directed by the Crown. If an appeal to a court is decided against the Company, then the Company (at the written request of the Crown) shall take such steps as the Crown may reasonably require to cause an appeal in relation thereto to be prosecuted to the extent requested by the Crown and permissible by law.
 - (iv) If any reference to the Administrative Appeals Tribunal or (as the case may be) any proceedings before such Supreme Court or Federal Court are decided in favour of the Company but the Commissioner of Taxation appeals against any such decision, the Company shall promptly (and, in any event, within 5 Business Days after becoming aware of the same) serve notice of such appeal on the Crown and (at the written request of the Crown) take such steps as the Crown may reasonably require before whatever court such appeal is to be heard.

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

(v) Any request for the Company to take any action under sub-paragraphs (i) to (iv) inclusive may only be made by the Crown if within 30 days after notice by the Company to the Crown of the assessment, decision or appeal in question, the Crown requests in writing that such assessment, decision or appeal be contested or be the subject of an appeal. Further, the Crown shall and does hereby indemnify the Company from and against all liabilities, losses, costs and expenses which the Company may suffer, incur or sustain as the direct result of objecting to or contesting or appealing from any such assessment, decision or appeal including, without limitation:

- (1) reasonable legal fees on a solicitor and client basis and disbursements; and
- (2) the amount of any interest or penalty which is actually incurred as a result of contesting or appealing any such assessment, decision or appeal.

In pursuance of the foregoing, if it becomes necessary in connection with any objection, reference or appeal under this Clause 4.2 (c) to make any payment to the Commissioner of Taxation on account of a disputed assessment, such payment shall be made by the Crown forthwith upon receiving notice from the Company to do so.

- (vi) Notwithstanding any objection, reference or proceedings undertaken or made by or on behalf of the Company pursuant to sub-paragraphs (i) to (iv) of this Clause 4.2 (c), the Crown shall pay the amount certified by the Company's auditors (a copy of which certificate shall be annexed to the notice given by the Company pursuant to Clause 4.1 (c)) as being the additional tax payable. Forthwith, upon the determination of such proceedings, objection or reference, the Company and the Crown shall make such payments by way of adjustment as the Company's auditors determine to be necessary to give effect to the outcome of such proceedings, objection or reference.
- (vii) Any determination made by the Company's auditors for the purposes of this Agreement shall be conclusive and binding on the parties to this Agreement (in the absence of manifest error) and this Agreement shall be deemed to have been amended so as to incorporate that determination, as if it had become effective immediately upon the date specified in or by reference to the relevant income tax assessment.
- (viii) Any reference in this Clause 4.2 (c) to the Company includes a reference to a company which is a group company of the Company pursuant to Section 80G of the Tax Act and the Company shall procure that any such group company complies with its obligations under this Clause 4.2 (c) accordingly.

4.3 Renegotiation Events—Construction Cost

Where the cost of constructing the Tunnel is increased as a result of any of the following events either party may give notice to the other (with a copy to the Mortgagee) that it wishes an alteration in the amount payable by the Crown to the Company under Clause 2.1. The events are as follows:

- (a) change in the law of New South Wales affecting the design and construction of the Tunnel except for awards of industrial tribunals;
- (b) injunctive or other proceedings or relief under the law of New South Wales except where due to:

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

- (i) the negligence fraud or wilful misconduct of the Company, the Joint Venturers or their sub-contractors;
- (ii) non-compliance with the Environmental Impact Determination; or
- (iii) the Company's non-compliance with the Lease;
- (c) failure of the Commissioner to comply with its obligation under Clause 2.5 of the Lease; or
- (d) acts or omissions by the Crown outside the terms of the Lease having a direct effect on the Tunnel.

4.4 Additional Payment by Crown

Where notice is given pursuant to Clause 4.3 the Company will use its best endeavours to obtain additional funding on terms acceptable to it to meet the increased costs. Where such funding is available the Crown shall pay to the Company an amount certified by the Company's auditors in the notice as being necessary to repay such additional funding and to meet all interest and other charges payable with respect to it. Where it is not possible to arrange additional funding on terms acceptable to the Company the Crown shall pay to the Company the amount certified by the Company's auditors as being the additional cost.

5. EVIDENCE OF CALCULATIONS

- (a) The Company shall procure that the Company's auditors make any calculations (and furnish appropriate certificates in respect of such calculations) which such auditors are required to make in accordance with any provision of this Agreement.
- (b) The Company shall promptly provide the Crown with sufficient information (including, without limitation, a certified copy of any certificates furnished by its auditors) to enable it to check and verify any calculations made by the Company or the Company's auditors pursuant to any provision of this Agreement.

6. COMPANY'S RIGHT TO GIVE SECURITY INTEREST OVER THIS AGREEMENT

For the purpose of securing its obligations to any person or persons providing financial accommodation to it, the Company may give a Security Interest over this Agreement and its rights to payment from the Crown to any person who provides financial accommodation to the Company or to any trustee for any such person. Where any person holding a first ranking Security Interest gives notice of its interest to the Crown no amendment to this Agreement or variation of any payment to be made under this Agreement (other than a variation pursuant to Clauses 2.4, 4.1 or 4.2 made as a result of a notice endorsed by the Mortgagee or a variation pursuant to Clause 4.3) and no waiver of the performance of any of the obligations of the Crown under this Agreement shall be effective unless approved in writing by the Mortgagee.

7. NOTICES

Any notice, approval, consent or other communication given or made to or by a party under this Agreement shall be in writing delivered to the address or sent to the telex number or facsimile number of the recipient shown below or to such other address, telex number or facsimile number as the recipient may have notified the sender and shall be deemed to be duly given or made:

- (a) (in the case of delivery in person or by facsimile transmission) when delivered to the recipient at such address or facsimile number; or

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987***SCHEDULE 1—AMENDMENTS—*continued***

(b) (in the case of telex) on receipt by the sender of the answerback code of the recipient at the end of transmission.

(i) The Crown:

The Minister for Roads,
C/- The Commissioner for Main Roads,
4th Floor, 309 Castlereagh Street,
Sydney, N.S.W. 2000
Telex No.: AA121825
Facsimile: (02) 218 6794

(ii) The Company:

Sydney Harbour Tunnel Company Limited,
3rd Floor, 100 Arthur Street,
North Sydney, N.S.W. 2060
Telex No.: AA21396 Answerback: TRANSHO
Attention: The Secretary
Facsimile: (02) 922 2834

8. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of New South Wales.

9. RESTRICTION ON ASSIGNMENTS

Neither the Crown nor the Company shall assign or transfer all or any part of its rights or obligations under this Agreement without the prior consent of the other of them and the Mortgagee. This Agreement shall be binding upon and inure to the benefit of each party and its respective successors and permitted assigns.

IN WITNESS the parties have executed this Agreement on the date first written on page 1 of this Agreement.

SIGNED by THE HONOURABLE LAURENCE JOHN BRERETON Minister for Public Works and Ports and Minister for Roads for and on behalf of HER MAJESTY QUEEN ELIZABETH THE SECOND IN RIGHT OF THE STATE OF NEW SOUTH WALES in the presence of:

KEVIN B. FORD

LAURENCE JOHN
BRERETON

SIGNED for and on behalf of SYDNEY HARBOUR TUNNEL COMPANY LIMITED by CARLO SALTERI and TADAO MITANI its Attorneys under Power of Attorney dated 29 June 1987 in the presence of:

M. OTSUKA

By his signing of this Agreement each Attorney states that at the time of signing he has received no notice of revocation of the Power of Attorney pursuant to which he so signs.

CARLO SALTERI
Attorney

TADAO MITANI
Attorney

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

SCHEDULE 1

Period	Annual toll paying vehicles using Sydney Harbour Bridge and the Tunnel
1st July 1992—30th June 1993	36.7 million
1st July 1993—30th June 1994	37.1 million
1st July 1994—30th June 1995	37.4 million
1st July 1995—30th June 1996	37.8 million
1st July 1996—30th June 1997	38.2 million
1st July 1997—30th June 1998	38.5 million
1st July 1998—30th June 1999	38.9 million
1st July 1999—30th June 2000	39.2 million
1st July 2000—30th June 2001	39.5 million
1st July 2001—30th June 2002	39.8 million
1st July 2002—30th June 2003	40.1 million
1st July 2003—30th June 2004	40.4 million
1st July 2004—30th June 2005	40.6 million
1st July 2005—30th June 2006	40.9 million
1st July 2006—30th June 2007	41.0 million
1st July 2007—30th June 2008	41.2 million
1st July 2008—30th June 2009	41.5 million
1st July 2009—30th June 2010	41.7 million
1st July 2010—30th June 2011	41.9 million
1st July 2011—30th June 2012	42.1 million
1st July 2012—30th June 2013	42.2 million
1st July 2013—30th June 2014	42.4 million
1st July 2014—30th June 2015	42.5 million
1st July 2015—30th June 2016	42.7 million
1st July 2016—30th June 2017	42.8 million
1st July 2017—30th June 2018	43.0 million
1st July 2018—30th June 2019	43.1 million
1st July 2019—30th June 2020	43.2 million
1st July 2020—30th June 2021	43.3 million
1st July 2021—30th June 2022	43.4 million
1st July 2022—30th June 2023	43.4 million

SCHEDULE 2

Dates	CPI
Column 1	Column 2
PART A	
30/06/86	153.00
30/09/86	155.61
31/12/86	159.00
31/03/87	162.09
30/06/87	163.71
30/09/87	166.50
31/12/87	171.72

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

31/03/88	172.23	175.06
30/06/88	175.17	178.46
30/09/88	178.16	181.93
31/12/88	181.20	185.46
31/03/89	184.29	189.06
30/06/89	187.43	192.74
30/09/89	190.63	196.48
31/12/89	193.88	200.30
31/03/90	197.19	204.19
30/06/90	200.55	208.15
30/09/90	203.97	212.20
31/12/90	207.45	216.32
31/03/91	210.99	220.52
30/06/91	214.59	224.81
30/09/91	218.25	229.17
31/12/91	221.97	233.63
31/03/92	225.76	238.17

PART B

30/06/92	229.61	242.79
30/09/92	231.31	245.77
31/12/92	233.03	248.79
31/03/93	234.76	251.84
30/06/93	236.50	254.93
30/09/93	238.25	258.06
31/12/93	240.02	261.23
31/03/94	241.80	264.43
30/06/94	243.60	267.68
30/09/94	245.40	270.96
31/12/94	247.22	274.29
31/03/95	249.06	277.65
30/06/95	250.90	281.06
30/09/95	252.76	284.51
31/12/95	254.64	288.00
31/03/96	256.53	291.54
30/06/96	258.43	295.11
30/09/96	260.35	298.74
31/12/96	262.28	302.40
31/03/97	264.22	306.11
30/06/97	266.18	309.87
30/09/97	268.16	313.67
31/12/97	270.15	317.52
31/03/98	272.15	321.42
30/06/98	274.17	325.36
30/09/98	276.20	329.36
31/12/98	278.25	333.40
31/03/99	280.31	337.49
30/06/99	282.39	341.63
30/09/99	284.49	345.82
31/12/99	286.60	350.07
31/03/00	288.72	354.37

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

30/06/00	290.87	358.71
30/09/00	293.02	363.12
31/12/00	295.20	367.57
31/03/01	297.39	372.08
30/06/01	299.59	376.65
30/09/01	301.81	381.27
31/12/01	304.05	385.95
31/03/02	306.31	390.69
30/06/02	308.58	395.48
30/09/02	310.87	400.34
31/12/02	313.17	405.25
31/03/03	315.50	410.22
30/06/03	317.84	415.26
30/09/03	320.19	420.35
31/12/03	322.57	425.51
31/03/04	324.96	430.73
30/06/04	327.37	436.02
30/09/04	329.80	441.37
31/12/04	332.25	446.79
31/03/05	334.71	452.27
30/06/05	337.19	457.82
30/09/05	339.69	463.44
31/12/05	342.21	469.13
31/03/06	344.75	474.88
30/06/06	347.31	480.71
30/09/06	349.88	486.61
31/12/06	352.48	492.58
31/03/07	355.09	498.63
30/06/07	357.73	504.75
30/09/07	360.38	510.94
31/12/07	363.05	517.21
31/03/08	365.75	523.56
30/06/08	368.46	529.98
30/09/08	371.19	536.49
31/12/08	373.95	543.07
31/03/09	376.72	549.74
30/06/09	379.51	556.48
30/09/09	382.33	563.31
31/12/09	385.16	570.23
31/03/10	388.02	577.22
30/06/10	390.90	584.31
30/09/10	393.80	591.48
31/12/10	396.72	598.74
31/03/11	399.66	606.08
30/06/11	402.63	613.52
30/09/11	405.61	621.05
31/12/11	408.62	628.67
31/03/12	411.65	636.39
30/06/12	414.70	644.20
30/09/12	417.78	650.55
31/12/12	420.88	656.96

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

31/03/13	424.00	663.43
30/06/13	427.15	669.97
30/09/13	430.31	676.57
31/12/13	433.51	683.23
31/03/14	436.72	689.97
30/06/14	439.96	696.77
30/09/14	443.22	703.63
31/12/14	446.51	710.56
31/03/15	449.82	717.57
30/06/15	453.16	724.64
30/09/15	456.52	731.78
31/12/15	459.91	738.99
31/03/16	463.32	746.27
30/06/16	466.75	753.62
30/09/16	470.22	761.05
31/12/16	473.70	768.55
31/03/17	477.22	776.12
30/06/17	480.76	783.77
30/09/17	484.32	791.49
31/12/17	487.91	799.29
31/03/18	491.53	807.16
30/06/18	495.18	815.12
30/09/18	498.85	823.15
31/12/18	502.55	831.26
31/03/19	506.28	839.45
30/06/19	510.03	847.72
30/09/19	513.82	856.07
31/12/19	517.63	864.51
31/03/20	521.47	873.03
30/06/20	525.34	881.63
30/09/20	529.23	890.32
31/12/20	533.16	899.09
31/03/21	537.11	907.95
30/06/21	541.10	916.90
30/09/21	545.11	925.93
31/12/21	549.15	935.05
31/03/22	553.22	944.27
30/06/22	557.33	953.57
30/09/22	561.46	962.97
31/12/22	565.63	972.46
31/03/23	569.82	982.04
30/06/23	574.05	991.71
30/09/23	578.31	1001.49
31/12/23	582.59	1011.35
31/03/24	586.92	1021.32
30/06/24	591.27	1031.38
30/09/24	595.65	1041.55
31/12/24	600.07	1051.81

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987***SCHEDULE 1—AMENDMENTS—*continued*****SCHEDULE 6**

(Sec. 5)

THE NET BRIDGE REVENUE LOAN AGREEMENT

THIS AGREEMENT is made the 29th day of June, 1987

- BETWEEN**
1. THE COMMISSIONER FOR MAIN ROADS a corporation sole established pursuant to the State Roads Act 1986, of 309 Castlereagh Street, Sydney (the "Commissioner"); and
 2. SYDNEY HARBOUR TUNNEL COMPANY LIMITED, a company incorporated in the State of New South Wales with its registered office at 100 Arthur Street, North Sydney (the "Company").

WHEREAS:

- A. Pursuant to obligations contained in the Lease the Company has agreed to design, construct and operate the Tunnel.
- B. In consideration of the Company agreeing to design, construct and operate the Tunnel the Commissioner has agreed to make certain loans to the Company on the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION**1.1 Definitions**

- "Business Day" means any day on which trading banks are open for business in Sydney.
- "Crown" means The Honourable Laurence John Brereton Minister for Public Works and Ports and Minister for Roads for and on behalf of Her Majesty Queen Elizabeth the Second in Right of the State of New South Wales.
- "Date of Completion" means the date on which the Tunnel is first opened to the public for the passage of vehicular traffic.
- "DMR Deed of Charge" means the deed of charge dated the same date as this Agreement between the Company as mortgagor and the Commissioner as mortgagee.
- "ERS Agreement" means the Ensured Revenue Stream Agreement dated the same date as this Agreement between the Company and the Crown.
- "Government Agency" means any government or any governmental, semi governmental or judicial entity or authority.
- "Joint Venturers" means each of Transfield (SHTJV) Pty. Limited and Kumagai Gumi Co., Ltd. and "Joint Venturer" means either of them.
- "Lease" means the lease between the Commissioner and the Company dated the same date as this Agreement.
- "Loans" means the loans made by the Commissioner pursuant to Clause 2.1.
- "Mortgagee" means any holder of a first ranking Security Interest over this Agreement who gives notice to the Commissioner pursuant to Clause 7.
- "MSF Account" means the account of that name referred to in Clause 3.3 of the Operation, Repair and Maintenance Agreement.

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

- “Operating Account” means the account of that name referred to in Clause 3.2 of the Operation, Repair and Maintenance Agreement.
- “Operation, Repair and Maintenance Agreement” means the agreement so entitled dated the same date as this Agreement between the Commissioner and the Company.
- “Relevant Company” means any party to a Relevant Document other than the Crown, the Commissioner, Perpetual Trustee Company Limited, Westpac Banking Corporation and the party providing the Performance Bond.
- “Relevant Document” means each of:
- (a) this Agreement;
 - (b) the ERS Agreement;
 - (c) the Trust Deed;
 - (d) the Deed of Covenant between ACTL Holdings Pty. Limited, Kumagai Gumi Co., Ltd., Perpetual Trustee Company Limited and the Commissioner;
 - (e) the Lease;
 - (f) the Shareholder Loan and Equity Agreement between the Shareholder, the Company, Kumagai Gumi Co., Ltd. and ACTL Holdings Pty. Limited providing, amongst other things, for a loan of \$40,000,000 to the Company from the Shareholder;
 - (g) the Underwriting Agreement between the Company and Westpac Banking Corporation;
 - (h) the Design and Construction Agreement between the Company and the Joint Venturers;
 - (i) the Operation, Repair and Maintenance Agreement;
 - (j) the DMR Sub-contract between the Company and the Commissioner;
 - (k) the DMR Deed of Charge;
 - (l) the Performance Bond provided on behalf of the Joint Venturers in favour of the Company, in the amount of \$40,000,000;
 - (m) the Guarantee and Indemnity between Kumagai Gumi Co., Ltd., Transfield Pty. Limited and other companies in the Transfield group of companies, the Company and the Commissioner;
 - (n) the Subcontract Charge between Transfield Kumagai Contracting Pty. Limited and the Commissioner; and
 - (o) any other document or agreement which the parties to this Agreement agree is to be a Relevant Document for the purposes of this Agreement, and any document or agreement entered into under, or for the purpose of amending or novating, any of them.
- “Security Interest” includes any mortgage, pledge or charge or any security or preferential interest or arrangement of any kind given by the Company.
- “Senior Debt” means all money (other than the Loans) which the Company is or may become actually or contingently liable to pay on any account, including (without limitation) any money payable pursuant to any contractual obligation where such payment is conditional upon the performance by another person of an obligation owed to the Company.
- “Senior Creditor” means any person to whom the Company owes Senior Debt.

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

“Shareholder” means Tunnel Holdings Pty. Limited.

“Special Account” means the account of the Company No. 032-099-88-9458 with Westpac Banking Corporation, 169 Miller Street, North Sydney or such other account as the Company and the Mortgagee notify the Commissioner in writing from time to time.

“Trust Deed” means the deed dated the same date as this Agreement under which the Company has granted a charge in favour of Perpetual Trustee Company Limited.

“Tunnel” means the whole of the permanent works to be designed and constructed on and in the Tunnel Site (as defined in the Lease), the scope of which works is set out in the Scope of Works and Design Criteria contained in Schedule 1 to the Lease.

1.2 Interpretation

In this Agreement headings are for convenience only and shall not affect its interpretation and except to the extent the context otherwise requires:

- (a) words denoting the singular number shall include the plural and vice versa;
- (b) references to Clauses, Annexures and Schedules are references to clauses, annexures and schedules of this Agreement; and
- (c) references to any party to this Agreement or any other document or agreement shall include its successors or permitted assigns.

1.3 Business Days

If any payment is required to be made on a day which is not a Business Day, it shall be made on the preceding Business Day.

2. NET BRIDGE REVENUE LOANS

2.1 Loans

Subject to Clause 4, unless and to the extent that the Mortgagee otherwise agrees in writing, the Commissioner shall if requested by notice in writing from the Company make loans to the Company on each of the following dates in the following amounts:

DATE	AMOUNT \$m
10th July 1987	2.500
On the 10th day of each of the months	
from August 1987 until July 1988	inclusive 2.483
“ August 1988 until January 1989	” 2.550
“ February 1989 until July 1989	” 3.467
“ August 1989 until July 1990	” 3.983
“ August 1990 until July 1991	” 4.017
“ August 1991 until July 1992	” 4.142
10th August 1992	4.250
10th September 1992	4.248

The Loans will be paid into the Special Account.

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

2.2 Repayment

Subject to the terms of this Agreement and in particular to Clause 2.4 the Loans will become repayable on 31 December, 2022 or the determination of the Lease whichever is later.

2.3 Interest

The Loans will be interest free.

2.4 Funds for repayment

Subject to the terms of this Agreement the Loans will be repayable out of funds available as at the repayment date comprising:

- (a) the amount uncalled or called and unpaid in respect of the four million ordinary shares of one dollar each issued paid as to one cent on the Date of Completion; and
- (b) the net assets of the Company excluding all funds in the Operating Account and all funds in the MSF Account as at the date of the repayment.

3. REPRESENTATIONS AND WARRANTIES

The Company makes the following representations and warranties for the benefit of the Commissioner as at the date of this Agreement.

- (a) (Status): It is a corporation validly existing under the laws of the State of New South Wales.
- (b) (Corporate power): It has the corporate power to enter into and to perform its obligations under this Agreement and each other Relevant Document to which it is a party.
- (c) (Corporate authorisations): It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and each other Relevant Document to which it is a party.
- (d) (Agreement binding): This Agreement and each other Relevant Document to which it is a party is a valid and binding obligation enforceable in accordance with its terms.
- (e) (Transaction permitted): Neither the execution and performance by it of this Agreement and each other Relevant Document to which it is a party nor any transaction contemplated under it or them will violate in any respect any provision of:
 - (i) any treaty or law or any judgment, ruling, order or decree of any Governmental Agency binding on it;
 - (ii) its memorandum or articles of association; or
 - (iii) any other document or agreement which is binding upon it or its assets.
- (f) (No litigation): No litigation, arbitration, tax claim, dispute or administrative proceeding is current or pending or is, to its knowledge threatened against it or any of its assets.
- (g) (Scope of business): It does not carry on any business other than that necessary to comply with its obligations under the Relevant Documents.

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

4. CONDITIONS PRECEDENT

The obligation of the Commissioner to provide the Loans is subject to the condition that he has received, in form and substance satisfactory to him, the following prior to the making of the first Loan:

- (a) (Memorandum and Articles): a certified copy of the Memorandum and Articles of Association of each Relevant Company;
- (b) (Corporate authorisations): a certified copy of all corporate authorisations of each Relevant Company required for the execution and performance of each Relevant Document to which it is a party;
- (c) (Relevant Documents): a certified copy or, in the case of any Relevant Document to which the Company is a party, the original, of each duly executed, stamped and, where relevant, registered Relevant Document;
- (d) (Capital contribution): evidence that the Shareholder has contributed an initial \$200,000 capital to the Company, and is bound and will have the financial means to contribute additional capital of \$6,800,000;
- (e) (No default): a certificate from a director of the Company that no Relevant Company is in default under any Relevant Document to which it is a party;
- (f) (Maritime Services Board): evidence that the Maritime Services Board has granted or will grant a lease of the land described in Schedule 4 to the Sydney Harbour Tunnel (Private Joint Venture) Act 1987 and a licence for, amongst other things, access to the Port Jackson harbour bed; and
- (g) (Special Account): evidence that the Special Account has been established and that the acts, matters and things required to be done to ensure that withdrawals from the Special Account may only be made with the consent of the Commissioner in accordance with Clause 5.2 of the Trust Deed have been done.

5. OBLIGATION OF COMMISSIONER ABSOLUTE AND UNCONDITIONAL

5.1 Subject to Clause 4 the obligation of the Commissioner to make Loans to the Company under Clause 2 shall be free from any right of set-off, shall be absolute, unconditional and irrevocable and shall not be affected by any default, event of force majeure or other event or circumstance which otherwise would or might at law terminate or permit termination of this Agreement or any of its provisions, or excuse compliance with or performance of or provide a defence to any proceedings to enforce the Commissioner's obligations under this Agreement. The obligations of the Commissioner shall not be terminated on account of any such matter or thing and shall be enforceable notwithstanding any such matter or thing.

5.2 Without limiting the generality of Clause 5.1 the obligations of the Commissioner under Clause 2 shall not be affected by the occurrence of any of the following:

- (a) the Tunnel not commencing operations or operating continuously;
- (b) the Tunnel not having been completed;
- (c) the Tunnel not being constructed;
- (d) any interruption or cessation in the operation either in whole or part of the Sydney Harbour Bridge;
- (e) the failure of the Commissioner to receive any money in the form of tolls from the operation of the Sydney Harbour Bridge;

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

- (f) the existence, currency or enforceability or legality of any agreement, arrangement or understanding whether oral or in writing between any persons in any way connected with the construction or operation of the Tunnel;
- (g) any breach or alleged breach by any person of the terms of any such agreement, arrangement or understanding; or
- (h) the cessation of the existence of any party to any such agreements, arrangements or understandings.

6. SUBORDINATION

6.1 The Loans will be subordinated to the payment of all Senior Debt of the Company and accordingly the Commissioner will not claim or receive from the Company by set off or in any other manner any part of the Loans until all Senior Debt has been paid.

6.2 In the event of any payment or distribution of assets of the Company in cash or in kind upon any dissolution, winding up, liquidation or reorganisation of the Company, the Senior Creditors shall first be entitled to receive payment in full of their indebtedness before the Commissioner receives any payment in respect of the Loans.

6.3 Any distribution to which the Commissioner would be entitled but for the provisions of this Agreement shall be paid or delivered by the liquidator directly to the Senior Creditors rateably according to their indebtedness until they have been paid in full.

6.4 If notwithstanding Clause 6.2 any distribution is received by the Commissioner in respect of the Loans such distribution shall be paid over to the Senior Creditors for application rateably against their Senior Debt until the Senior Debt has been paid in full and until such payment in full shall be held in trust by the Commissioner for the Senior Creditors. For the purposes of this Clause the Commissioner may rely on a certificate from the Mortgagee as to the identity of Senior Creditors and the amount of their Senior Debt.

6.5 Without prejudice to the Company's obligations under the DMR Deed of Charge, the Company shall not without the prior written consent of the Commissioner enter into any contract or arrangement or otherwise incur obligations (whether present or future, actual or contingent) of any kind whatsoever (including, without limitation, any sub-contract of its obligations under the Operation, Repair and Maintenance Agreement) otherwise than on terms appropriate to an arms length commercial transaction in the ordinary course of the Company's business or by virtue of which the Company's ability to repay the Loans in accordance with Clause 2.2 will or may be prejudiced.

6.6 Notwithstanding anything else in this Agreement the Loans shall only be repayable if the Commissioner has made all Loans which it is required to make under Clause 2.1 and if those Loans have been paid into the Special Account.

7. COMPANY'S RIGHT TO GIVE SECURITY INTEREST OVER THIS AGREEMENT

For the purpose of securing its obligations to any person or persons providing financial accommodation to it, the Company may give a Security Interest over this Agreement and its rights to receive Loans. Where any person holding such a Security Interest gives notice of its interest to the Commissioner no amendment to this Agreement and no waiver of the performance of any of the obligations of the Commissioner under this Agreement shall be effective unless approved in writing by the Mortgagee.

*Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*

8. PROHIBITION ON ASSIGNMENTS

Neither the Company nor the Commissioner may sell, assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the other of them and the Mortgagee. If such consent is given this Agreement shall be binding upon and inure to the benefit of each party and its respective successors and assigns.

9. WAIVER OF IMMUNITY

The Commissioner waives its immunity (if any) under any act or rule of law from legal proceedings or proceedings by way of arbitration which may be instituted against the Commissioner in the enforcement of this Agreement, notwithstanding any act or rule of law to the contrary.

10. NOTICES

Any notice, approval, consent or other communication given or made to or by a party under this Agreement shall be in writing delivered to the address or sent to the telex number or facsimile number of the recipient shown below or to such other address, telex number or facsimile number as the recipient may have notified the sender and shall be deemed to be duly given or made:

- (a) (in the case of delivery in person or by facsimile transmission) when delivered to the recipient at such address or facsimile number; or
- (b) (in the case of telex) on receipt by the sender of the answerback code of the recipient at the end of transmission.

(i) The Commissioner:

The Commissioner for Main Roads,
4th Floor, 309 Castlereagh Street,
Sydney, N.S.W. 2000
Telex No: AA121825
Facsimile: (02) 218 6794

(ii) The Company:

Sydney Harbour Tunnel Company Limited,
3rd Floor, 100 Arthur Street,
North Sydney, N.S.W. 2060
Telex No: AA21396 Answerback: TRANSHO
Attention: The Secretary
Facsimile: (02) 922 2834

11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of New South Wales.

IN WITNESS the parties have executed this Agreement on the date first written on page 1 of this Agreement.

I, BERNARD GODFREY FISK
THE COMMISSIONER FOR MAIN
ROADS hereunto affix the official Seal of
the Commissioner for Main Roads in the
presence of:

} BERNARD GODFREY FISK

DAVID J. TAYLOR

Sydney Harbour Tunnel (Private Joint Venture) Amendment 1987

SCHEDULE 1—AMENDMENTS—*continued*

SIGNED for and on behalf of SYDNEY HARBOUR TUNNEL COMPANY LIMITED by TADAO MITANI and CARLO SALTERI its Attorneys under Power of Attorney dated 29 June, 1987 in the presence of:

TERENCE BURKE

} By his signing of this Agreement each Attorney states that at the time of signing he has received no notice of revocation of the Power of Attorney pursuant to which he so signs

TADAO MITANI
Attorney

CARLO SALTERI
Attorney

