[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 1 October 1963

Words struck out by the Committee of the Whole are shown in italics within bold round brackets; words inserted are shown in roman underlined with a double rule.

Hon. Mr Goosman

MANAPOURI - TE ANAU DEVELOPMENT

ANALYSIS

A BILL INTITULED

An Act to validate an agreement between Her Majesty the Queen and Consolidated Zinc Proprietary Limited in respect of the utilisation by the Crown of the water resources of Lakes Manapouri and Te Anau and of the Waiau and Mararoa Rivers for the generation of electrical power for industrial and other purposes.

WHEREAS Her Majesty the Queen, acting by and through the Minister of Electricity, and Consolidated Zinc Proprietary Limited, the registered office of which is in Melbourne in the State of Victoria in the Commonwealth of Australia, have executed an agreement, a copy whereof is set out in the Schedule to this Act, whereby the Minister has agreed (among other things) to construct and operate certain works for the generation and transmission of electrical power for industrial and other purposes from the water resources of Lakes Manapouri and Te Anau and of the Waiau and Mararoa Rivers and all tributaries thereof from their respective sources to a

point five miles below the confluence of the said rivers and to make electrical power available to the Company on certain terms and conditions, and the Company has agreed (among other things) to surrender its rights in respect of the said water resources under an agreement made on the nineteenth day of January, nineteen hundred and sixty, between Her Majesty the Queen of the one part and the Company of the other part: And whereas it is necessary to validate the agreement first hereinbefore mentioned and to authorise and empower the Minister to carry out and perform the terms of and otherwise implement that agreement:

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

1. Short Title—This Act may be cited as the Manapouri - Te Anau Development Act 1963.

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

"The agreement" means the agreement between the Minister and the Company, a copy of which is set out in the Schedule to this Act:

"The Company" means Consolidated Zinc Proprietary Limited, a company duly incorporated in Victoria, Australia, and includes its permitted assigns:

"Minister" means the Minister of Electricity:

"Sea level" means mean sea level at Deep Cove:

"The said water resources" means the water resources of Lakes Manapouri and Te Anau and the water resources of the Waiau and Mararoa Rivers and all tributaries thereof from their respective sources to a point five miles below the confluence of the said rivers; and includes the water resources of all other rivers flowing into the said lakes and their tributaries.

3. Validating agreement—(1) The agreement is hereby declared to be valid and binding in all respects and to have full force and effect according to its tenor.

(2) The Minister on behalf of Her Majesty the Queen shall be deemed to have been duly empowered to enter into and execute the agreement and to confer on the Company the rights specified therein.

(3) The Minister shall have, and shall be deemed since the making of the agreement to have had, power to carry out, perform, exercise, and grant all acts, functions, rights, duties, and obligations prescribed in the agreement.

(4) The Minister shall have, and shall be deemed since the making of the agreement to have had, power to enter into and carry out an agreement or agreements with the Company with respect to all matters which it is contemplated in the agreement are or need to be agreed between the parties thereto or which it is found necessary to agree upon for the purpose of giving full effect to the agreement, and the Minister shall also have power from time to time to agree to any variation or amendment of any such agreement or agreements.

(5) The agreement may from time to time be varied as provided in clause 22 thereof.

4. Authorising Minister to construct and use works—(1) The Minister shall have, and shall be deemed since the making of the agreement to have had, full power and authority—

(a) To erect, construct, provide, use, and operate all works, appliances, and conveniences which may be necessary or requisite for or in relation to—

(i) The utilisation of water power from the said water resources for the generation of electrical power; and

(ii) The generation, transmission, use, supply, and sale of electrical power required from time to time to be supplied pursuant to the agreement; and

(iii) The transmission, use, supply, and sale of any other electrical power generated from the said water resources:

(b) To use electrical power when so generated in the construction, working, or maintenance of any public work:

(c) To raise or lower the levels of—

(i) Lakes Manapouri and Te Anau; and

(ii) The Waiau and Mararoa Rivers and their tributaries; and

(iii) All other rivers flowing into the said lakes and their tributaries; and

(iv) Such other rivers and streams as the Governor-General may from time to time specify for the purposes of this paragraph by Order in Council made pursuant to section 311 of the Public Works Act 1928:

Provided that, except as provided in subsection (2) of this section, nothing used, constructed, or provided pursuant to this section shall be used or operated for the purpose of controlling the said lakes at a level higher than six hundred and seventy-six decimal six feet above sea level or for the purpose of controlling the level of Lake Te Anau below (*six hundred and fifty-six decimal six feet*) six hundred and fifty-three decimal six feet above sea level or the level of Lake Manapouri below (*five hundred and seventy-five decimal five feet*) five hundred and seventy-two decimal five feet above sea level:

Provided also that, after the level of Lake Manapouri is raised by any dam to a level more than twenty-seven decimal five feet above its said minimum level of (*five hundred and seventy-five decimal five feet*) five hundred and seventy-two decimal five feet above sea level, except as provided in subsection (2) of this section, nothing used, constructed, or provided pursuant to this section shall be used or operated for the purpose of controlling the level of that lake at a level more than twenty-seven decimal five feet below whichever is the lower of the following levels, namely:

(i) The level to which it is so raised; or

(ii) The highest level at which the dam is designed to control the level of that lake under normal conditions:

(d) For the purposes of this Act, to construct tunnels under private land, or aqueducts and flumes over the same, and to erect electric lines as defined in section 319 of the Public Works Act 1928 over or along any such land, without being bound to acquire the same, and with right of way to and along any such works and erections:

(e) To supply and sell electrical power generated from the said water resources, and recover money due for the same.

(2) The Minister may, in his discretion in special circumstances, authorise the level of each of the said lakes to be reduced temporarily below the level specified in respect of that lake by paragraph (c) of subsection (1) of this section.

(3) Except as otherwise provided in this Act or in the agreement all the provisions of the Public Works Act 1928 shall operate as if the powers conferred on the Minister by this section were conferred on him by an Order in Council made under section 311 of that Act.

5. Preservation of natural scenery and fishery—Before exercising any power conferred on him by section 4 of this Act within the Fiordland National Park, the Minister shall consult—

(a) The Minister of Lands on the measures to be taken with a view to preserving natural scenery that may be affected by the exercise of the power:

(b) The Minister of Internal Affairs on measures to be taken to minimise any adverse effects on the trout fishery in Lakes Manapouri and Te Anau that may result from the exercise of the power.

6. Special Act—This Act shall be deemed to be a special Act within the meaning of section 18 of the Public Works Act 1928.

7. Restrictions on mining rights—As from the commencement of this Act, no mining privilege or coal mining right shall, without the consent of the Minister of Electricity and the Minister of Mines, be granted under the Mining Act 1926 or the Coal Mines Act 1925 to any person, authority, or body over—

(a) Lakes Manapouri and Te Anau as they for the time being exist:

(b) The Mararoa River and all its tributaries, and the portion of the Waiau River, and all tributaries running into that portion, from its source to a point five miles below its confluence with the Mararoa River:

(c) Any other rivers flowing into the said lakes and their tributaries:

(d) Any land that would be within half a mile of—

(i) The said lakes as they would exist if their levels were raised to a height of six hundred and seventy-six decimal six feet:

(ii) The Mararoa River and any of its tributaries, and the said portion of the Waiau River and any of its tributaries running into that portion, as the said river, portion, and tributaries would exist if the levels of the said lakes were raised to that height:

(iii) Any other rivers flowing into the said lakes, and their tributaries, as those rivers and tributaries would exist if the levels of the said lakes were raised to that height:

(e) Any land taken, purchased, or set apart for the purpose of works in connection with the generation and transmission of electrical power from the said water resources.

8. Effect of Act—The provisions of this Act and of the agreement shall have effect notwithstanding anything to the contrary in any other enactment.

9. Repeal—The Manapouri - Te Anau Development Act 1960 and the Manapouri - Te Anau Development Amendment Act 1961 are hereby repealed.

SCHEDULE TO THE ACT

AGREEMENT DATED 15 AUGUST 1963

AN Agreement made the 15th day of August, 1963 between Her Majesty the Queen in respect of the Government of New Zealand acting by and through the Minister of Electricity (hereinafter referred to as "the Crown") of the one part and Consolidated Zinc Proprietary Limited the registered office of which is at 95 Collins Street, Melbourne in the State of Victoria in the Commonwealth of Australia of the other part Whereas by an agreement made the 19th day of January, 1960 between the Crown of the one part and the Company of the other part which agreement was validated by and is set out in the Schedule to the Manapouri - Te Anau Development Act 1960 and which pursuant to clause 25 thereof was varied by Order in Council made the 28th day of March, 1961 and published in the *New Zealand Gazette* of the 13th day of April, 1961 at page 554 (which agreement as so varied is hereinafter referred to as "the 1960 Agreement") the Crown agreed *inter alia* to grant to the Company for certain purposes certain rights in respect of the water resources of Lakes Manapouri and Te Anau and of the Waiau and Mararoa Rivers and all tributaries thereof from their respective sources to a point five miles below the confluence of the said rivers (all hereinafter referred to as "the water resources") including the right to convert the water resources into electrical or mechanical energy And whereas the Company has fulfilled all its obligations under the 1960 Agreement up to the date hereof including the expenditure of an amount in excess of £100,000 on the investigation and economic appraisal referred to in clause 2 of the 1960 Agreement And whereas it is considered advisable that the Crown should now proceed with the construction of works for the generation of electrical power from the water resources with a view to facilitating the early establishment of large-scale industry in Southland And whereas the Crown is agreeable to proceed with the construction of those works as a Government work with a view to the supply and sale of electrical power as hereinafter provided And whereas it is intended that those works shall be constructed generally on the basis of the January reports (as hereinafter defined) And whereas the Company is agreeable to surrender its rights in respect of the water resources under the 1960 Agreement in exchange for the rights to receive (upon the terms hereinafter contained) continuous electrical power generated by the Crown from the water resources but retaining certain rights granted to it by the 1960 Agreement Now therefore it is hereby agreed as follows:—

1. In this agreement unless the context otherwise requires the terms following shall have the meanings respectively assigned to them—

"associated company" means any company approved in writing by the Minister for the purposes of this agreement which is associated directly or indirectly with the Company in its business or operations and includes any company so approved of which the Company is a subsidiary company:

"the Company" means Consolidated Zinc Proprietary Limited and includes its permitted assigns:

"the Crown" means the party of the first part hereto:

"the engineer corporation" means Bechtel Pacific Corporation Limited:

"the January reports" means two reports both dated January 1962 and respectively entitled "Manapouri Power Scheme – Initial Development" and "Manapouri Power Scheme and Aluminium Industry – Interim Supply of part of the output to New Zealand National Power System" obtained by the Company from or through the engineer corporation:

"the Minister" means the Minister of Electricity:

"subsidiary company" means a company which is a subsidiary of the Company within the meaning of that term in section 158 of the Companies Act 1955:

"Crown block" means a block of 100 megawatts of electrical power as generated at the power station at Lake Manapouri and supplied at an annual load factor of 60 per centum:

"100 megawatt block" means a block of 100 megawatts of electrical power as generated at and available from the power station at Lake Manapouri continuously at a load factor of 100 per centum:

"the power potential of the water resources" means the electrical power which can be generated by utilising so much of the long term regulated flow as can be obtained and used from the water resources and which for the purposes of this agreement shall be the equivalent of the total electrical power of four decimal six 100 megawatt blocks and two Crown blocks or such other total wattage of electrical power as the parties may from time to time agree having regard to the then existing recorded data:

"undeveloped portion of the power potential of the water resources" means that portion of the power potential of the water resources which at the relevant time is not required to provide:—

(i) the Company's total requirements of electrical power under notices given by it under clause 5 hereof; plus

(ii) the electrical power being regularly generated from the water resources and utilised by the Crown for supply to consumers other than the Company, and calculated on the basis that such utilisation is at an annual load factor of 60 per centum.

2. (a) The Company will forthwith deliver to the Crown all reports and information as to the results of the investigation and economic appraisal referred to in clause 2 of the 1960 Agreement, all hydrological, geological, engineering and other technical reports and data in its possession or control relating to the development of the water resources and all reports obtained by the Company from the engineer corporation relating to the development of the water resources.

(b) The Company shall deliver to the Crown all vehicles buildings plant and other equipment of the Company or of Comalco Power Limited and any works of either or both of those Companies now in the vicinity of the said lakes and rivers and shall as may be necessary transfer or cause to be transferred the property therein to the Crown.

3. With a view to facilitating the intended continuance by the Crown of the services of the engineer corporation in the design of all the works referred to in clause 4 hereof and in the management and supervision of the construction and erection thereof the Company shall render such assistance as may reasonably be required by the Crown in the making

of arrangements between the Crown and the engineer corporation on the same terms *mutatis mutandis* as those now existing between Comalco Power Limited and the engineer corporation.

4. The Crown will construct generally on the basis of the January reports, all works necessary for the generation, transmission and supply of electrical power which the Company is entitled from time to time to require the Crown to supply under clause 5 hereof and will complete and commission the same by the times such electrical power is due to be supplied to the Company under that clause.

5. (a) Subject to the provisions of this clause and of clause 8 hereof the Crown shall commence to make available to the Company continuous electrical power at the times and in the quantities required to be supplied to the Company as stated in notices given pursuant to this clause by the Company to the Crown.

(b) Notwithstanding anything otherwise contained in this clause the Crown shall not be obliged to commence to make electrical power available to the Company until whichever is the earlier of:—

(i) the date on which the Crown has developed from the water resources electrical power at least equivalent to two Crown blocks; and

(ii) the 1st day of July, 1971.

(c) On or before the 31st day of December, 1968 the Company may give to the Crown notice requiring the supply to the Company of either one or two 100 megawatt blocks (as the Company may decide) on and from the date specified in the notice but not earlier than 30 months after the date the notice is given.

(d) After giving the notice referred to in paragraph (c) of this clause and subject to paragraph (e) of this clause the Company may give to the Crown from time to time subsequent notices each requiring the supply to the Company of one or more further 100 megawatt blocks on and from the date specified in the notice which date shall not be earlier than thirty months after the date the notice is given nor later than the 30th day of June, 1991 or such later date as the Minister may agree.

Provided always that—

(i) if at any time the undeveloped portion of the power potential of the water resources is insufficient to supply a 100 megawatt block but is sufficient to supply continuously a block of less than 100 megawatts of continuous electrical power then the Company may give to the Crown a notice requiring the supply to the Company of a block of that lesser wattage on and from the date specified in the notice but not earlier than thirty months after the date the notice is given;

(ii) if at any time the Company shall give a notice requiring the supply of a block or blocks of continuous electrical power and the undeveloped portion of the power potential of the water resources is then known to the Company to be insufficient to supply that block or those blocks then the date specified in that notice shall not be earlier than six years after the date the notice is given;

(iii) if at any time the Company shall give a notice requiring the supply of a block or blocks of continuous electrical power and the undeveloped portion of the power potential of the water resources is but is not then known to the Company to be insufficient to supply that block or blocks and the date specified in that notice is earlier than six years after the notice is

given the Crown shall forthwith notify the Company accordingly and inform the Company of the then undeveloped portion of the power potential of the water resources and upon the Crown so notifying the Company the notice given by the Company shall be deemed to be of no effect, but without prejudice to the right of the Company to give a further notice or notices pursuant to the provisions of this clause.

(e) The Company shall not give a notice under paragraph (d) of this clause if the power potential of the water resources is then insufficient for the supply of:—

(i) the electrical power required to be supplied under that notice; plus

(ii) the Company's total requirements of electrical power under prior notices given by it under this clause; plus

(iii) the electrical power required for two Crown blocks.

Provided always that if at any time the power potential of the water resources is insufficient to supply a 100 megawatt block in addition to the electrical power referred to in sub-paragraphs (ii) and (iii) of this paragraph but is sufficient to supply continuously a block of less than 100 megawatts of continuous electrical power in addition as aforesaid then the Company may give a notice requiring the supply to the Company of a block of that lesser wattage.

(f) If the Company is prevented by paragraph (e) of this clause from giving a notice under paragraph (d) of this clause requiring the supply of a 100 megawatt block then nevertheless after the 30th day of June, 1986 or such earlier date as the Minister may agree and before the 1st day of July, 1991 or such later date as the Minister may agree the Company may at any time request the Crown to supply the Company with a block of further electrical power (either continuously or at a load factor as stated in such request) which together with the Company's total requirements of electrical power under notices previously given under this clause can be supplied within the limits of the power potential of the water resources. The Crown will use its best endeavours to make available to the Company from the water resources the electrical power so requested. The Crown shall notify the Company as soon as possible the date from which the electrical power so requested by the Company would be available. At any time within six months after the date on which the Company is so advised by the Crown it shall have the right to give to the Crown notice requiring the supply to the Company of the electrical power so requested on and from the date of availability as so advised by the Crown or such other later date as may be agreed by the Minister and the Company.

(g) If the Company does not give a notice to the Crown pursuant to paragraph (c) of this clause by the 31st day of December, 1968 (or any extended date under clause 13 hereof) requiring the supply to the Company of either one or two 100 megawatt blocks (as the Company may decide) by not later than the 1st day of July, 1971 then this agreement shall forthwith thereafter cease and determine except as to the provisions of clauses 16 and 26 hereof.

6. The Crown shall inform the Company in the event of there being prior to the 1st day of July, 1991 or any later date agreed by the Minister under paragraph (f) of clause 5 hereof any proposal for the supply of electrical power for aluminium smelting in Southland other than to the Company.

7. Notwithstanding the provisions as to the minimum periods of notice and earliest times for giving notice in clause 5 hereof the Crown will use its best endeavours to shorten such minimum periods and advance such earliest times and the Minister may (notwithstanding the provisions of clause 22 hereof) from time to time approve of any shorter periods or earlier times and shall forthwith notify the Company of any such shorter periods or earlier times and the period during which they shall apply.

8. Each 100 megawatt block shall be subject to a tolerance of 5 per centum below and (subject to the availability of generating capacity) 5 per centum above 100 megawatts. The Company will not later than six months after commencing to take supply of each 100 megawatt block determine the actual electrical power as generated at the power station at Lake Manapouri required by it from that block within the said tolerance and will notify the Minister accordingly and the wattage so determined shall for the purposes of clause 5 hereof be the wattage of that block as from the time of such determination, and shall at all times be the wattage of that block for the purposes of payment under paragraph (b) of clause 9 hereof. Where the said determination is based on electrical power measured at the point of supply referred to in subparagraph (ii) of paragraph (a) of clause 10 hereof then in order notionally to convert the electrical power at the said point of supply into electrical power as generated at the power station at Lake Manapouri the electrical power at the said point of supply shall be multiplied by

$$\frac{100}{100 - \text{transmission loss.}}$$

For the purpose of this clause "transmission loss" shall mean the agreed percentage loss of electrical power on direct transmission from the power station at Lake Manapouri to the said point of supply which agreed percentage initially shall be one and one half but may from time to time thereafter be adjusted by agreement between the Minister and the Company after full consideration of the method of direct transmission of electrical power from the power station at Lake Manapouri to the said point of supply, the amount of electrical power being taken by the Company, the proportion of that amount to the whole of the electrical power being transmitted directly from the power station at Lake Manapouri to or through a point adjacent to the said point of supply, the Company's load factor, the Company's power factor (as defined in paragraph (b) of clause 10 hereof) and all other relevant factors. The provisions of this clause shall apply *mutatis mutandis* to any block of less than 100 megawatts which the Company may require the Crown to supply under the provisions of clause 5 hereof.

9. Subject to the provisions of clause 14 hereof:—

(a) The Crown shall continue to make available to the Company the continuous electrical power which the Crown is obliged to supply under the provisions of this agreement from the respective times when supply is due to commence under the provisions of clause 5 hereof until the expiration of this agreement.

(b) The Company shall pay for and continue to pay for the continuous electrical power made available to it by the Crown under the provisions of this agreement from the respective times when the supply thereof to the Company is first made available (being

not earlier than the dates when supply is due to commence under the provisions of clause 5 hereof unless otherwise agreed) until the expiration of this agreement.

Provided always however that:—

(i) If at any time the Company does not require all the electrical power to be made available as aforesaid or so made available then it will so notify the Minister in writing indicating the estimated electrical power not required and the period during which it will not be required, whereupon endeavours will be made, if the Crown so desires, to make suitable arrangements for the Crown to utilise that electrical power in its electricity distribution system during that period.

(ii) At any time when the Company does not take the total electrical power so made available to it and the Crown thereafter utilises any of that electrical power for itself or for supply to any of its consumers (other than the Company) then the Company shall not pay for that electrical power in respect of the period or periods during which it is so utilised by the Crown.

10. (a) The supply of electrical power by the Crown to the Company hereunder:—

(i) shall be given at a voltage of 220,000 volts:

(ii) shall be given and taken at 220,000 volt busbars situate at the Company's switchyard at or adjacent to the operations or works of the Company in the Bluff or Invercargill area:

(iii) shall be alternating current at a normal periodicity of 50 cycles per second on the three phase system: and

(iv) shall be available continuously at a load factor of 100 per centum.

(b) The Company agrees that the power factor at the point of supply referred to in subparagraph (ii) of paragraph (a) of this clause at the time when the Company takes the full load of electrical power for which it is obliged from time to time to pay under the provisions of this agreement shall not be less than 0·9 lagging or such lesser figure as the Minister may from time to time determine. "Power factor" means the ratio of the number of kilowatt hours to the number of kilovolt ampere hours at the said point of supply during any period of thirty consecutive minutes commencing at any hour or at thirty minutes past any hour.

11. In respect of its electrical installations the Company shall comply with the relevant provisions of the Electricians Act 1952, the Electric Linemen Act 1959, the Electrical Supply Regulations 1935, the Electrical Wiring Regulations 1961, and any amendment thereto or re-enactment thereof for the time being in force.

12. The Company shall not use sell or otherwise dispose of electrical power obtained hereunder except for its own purposes or for the purposes of any subsidiary company or any associated company.

13. At the request in writing of the Company all or any of the latest dates by which the Company may give notice as mentioned in clause 5 hereof and all or any of the dates by which the Company is obliged to pay for electrical power under this agreement may notwithstanding the provisions of clause 22 hereof be extended by the Minister for any reason deemed by him to be sufficient.

14. (a) The Crown shall not be liable to the Company for any failure to supply electrical power to the Company hereunder if such failure is the result of:—

(i) war or act of public enemies:
(ii) act of God:
(iii) strike or lock-out or stoppage or restraint of labour:
(iv) riot or civil commotion:
(v) the Crown's failure through no fault or neglect of its own to obtain adequate supplies of plant, equipment or materials necessary for the generation, transmission or supply of that electrical power: or
(vi) any other cause (except fire) beyond the control of the Crown.

The Crown shall use its best endeavours to recommence and continue the supply of electrical power to the Company as soon as possible after any such failure.

(b) In the event of the Company's operations carried on from time to time in the Bluff or Invercargill area, or any part or parts of those operations being prevented or hindered by:—

(i) any of the happenings referred to in subparagraphs (i), (ii), (iii) and (iv) of paragraph (a) of this clause:
(ii) the Company's failure through no fault or neglect of its own to obtain adequate supplies of plant, equipment or materials necessary for its said operations: or
(iii) any other cause (except fire) beyond the control of the Company:

which prevention or hindrance causes the Company's requirements of electrical power to be reduced below the total requirements for which immediately prior to that prevention or hindrance it was obliged to pay then during the period of the prevention or hindrance the Company shall not be obliged to pay for electrical power not taken or used by it; provided always that the Company shall use its best endeavours to minimise the effect of the said causes on its said operations as soon as possible thereafter.

(c) Section 315 of the Public Works Act 1928 and section 22A of the Electricity Act 1945 shall not apply to the operation of this agreement and the performance of the obligations hereunder.

15. (a) Within 60 days after receipt of notice under paragraph (c) of clause 5 hereof the Crown shall pay the Company the difference (together with interest thereon in accordance with clause 18 of the Schedule hereto) between £100,000 and the total cost incurred directly or indirectly by the Company to the date hereof on or in connection with the water resources including the cost of carrying out the investigation and economic appraisal referred to in clause 2 hereof; the cost of or arising out of the engagement of the engineer corporation; the cost of all hydrological, geological, engineering and other investigations; and the cost of shaft sinking and other works and of vehicles, buildings, plant and other equipment at or in the vicinity of the said lakes and rivers.

(b) For the purposes of this clause any cost as aforesaid which has been incurred directly or indirectly by Comalco Industries Pty. Limited or by Comalco Power Limited shall be deemed to have been wholly incurred by the Company.

(c) The Company within three months after the date of this agreement shall furnish the Crown with an audited certificate as to the above-mentioned total cost which certificate shall be conclusive evidence of the said cost.

16. If the Company does not give notice under paragraph (c) of clause 5 hereof by the 31st day of December, 1968 (or by any extended date under clause 13 hereof) then the Crown shall forthwith pay the Company the difference (together with interest thereon in accordance with clause 18 of the Schedule hereto) between £100,000 and the total cost referred to in clause 15 hereof.

17. Within 60 days after the Company is first obliged to pay for electrical power from the Crown hereunder the Crown shall pay to the Company the amount of £100,000 referred to in clause 15 hereof together with interest thereon in accordance with clause 18 of the Schedule hereto.

18. The Company shall pay for electrical power under this agreement in accordance with the provisions of the Schedule hereto; and all the terms and provisions of that Schedule (and accompanying Inventory) shall take effect and operate between the parties hereto as if they were terms and provisions of a further agreement between them supplementary to this agreement and read and construed herewith and each of the parties hereto shall respectively carry out and perform the agreements and undertakings on their respective parts as set out in that Schedule.

19. If:—

(a) after the giving of notice in writing with regard thereto by the Minister to the Company and the expiration of a reasonable time (not being less than two months) to be stated in that notice any amount payable under clause 18 hereof shall be in arrear or unpaid or (subject always to clause 14 hereof) any non-performance or non-observance by the Company of any of the agreements on the part of the Company herein expressed or implied shall continue; or

(b) the Company goes into liquidation or is wound up (otherwise than for the purposes of a reconstruction or amalgamation approved by the Minister) or compounds with or assigns its assets or a substantial part thereof for the benefit of its creditors or any number of them;

then in any such case the Crown may forthwith without suit and without notice or further notice as the case may be cancel this agreement and thereupon all the rights and interests of the Company under this agreement shall absolutely cease and determine but no such cesser or determination shall:—

(i) release or discharge the Company from liability for any moneys due or accruing due at the time of such cancellation or from liability for any prior non-performance or non-observance as aforesaid; or

(ii) affect the Company's rights under clauses 15, 16 and 17 hereof.

20. For the purpose of production in any undertaking for which the power acquired pursuant to this agreement may be used by them, the Company and any subsidiary company and any associated company shall have the right to import free of sales tax and free of all duties including primage duty (save that where such freedom from all duties would conflict with New Zealand's international obligations existing at the date of the 1960 Agreement the minimum duties consistent with those obligations shall apply if and so far as those obligations shall exist under any existing or substituted arrangement) alumina, cryolite, fluorspar, aluminium fluoride, petroleum coke, pitch, sodium carbonate and such other materials of whatsoever kind (including electrode materials) as may be agreed. It is further agreed that such licences as may from time to time be required for the importation of the foregoing materials will be freely granted. The Company and any subsidiary company and any associated company shall also have the right to export free of all duties and sales tax the following products manufactured by them or any of them namely:

aluminium, aluminium alloys, and other products of aluminium, and such other products as may be agreed.

It is further agreed that subject to any requirements of defence or national security such licences as may from time to time be required for the export of any of the foregoing products will be freely granted.

21. All differences and disputes between the parties touching or concerning the rights duties or obligations of the respective parties or any act or thing done suffered or omitted in pursuance of this agreement or of or touching the construction thereof shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1908 or any amendment thereto or re-enactment thereof for the time being in force.

22. With the approval of the Governor-General by Order in Council this agreement may be varied pursuant to agreement between the Minister and the Company and no provision of this agreement shall be varied nor shall the powers and rights of the Company hereunder be derogated from except in such manner or except as otherwise provided in clauses 7 and 13 hereof or except in the case of the Schedule (and accompanying Inventory) in clause 20 thereof.

23. (a) The Company may with the written consent of the Minister transfer its rights and obligations under this agreement in whole; or in whole save and except its rights under clauses 15, 16 and 17 hereof; or (as mentioned in subparagraph (ii) of paragraph (b) of this clause) in part; or its rights under the said clauses 15, 16 and 17 apart from its other rights and obligations under this agreement.

(b) Such consent shall not be refused in the case of:—

(i) an application made on or before the 31st day of December, 1968 for consent to transfer to Comalco Industries Pty. Limited or to any subsidiary (within the meaning of that term in section 158 of the Companies Act 1955) of that company the Company's rights and obligations hereunder with or without its rights under the said clauses 15, 16 and 17; or its rights under those clauses alone:

(ii) an application for consent to transfer rights and obligations hereunder in respect of a particular portion of electrical power (not without the consent of the Minister to be less than one 100 megawatt block) to any subsidiary company of Consolidated Zinc Proprietary Limited or to any subsidiary (within the meaning of that term in section 158 of the Companies Act 1955) of any permitted assignee of Consolidated Zinc Proprietary Limited.

24. All monetary amounts referred to in this agreement or calculated pusuant to its provisions shall be in terms of New Zealand currency and where any amount is payable by the Crown to the Company under clauses 15, 16 or 17 hereof it shall be paid at the option of the Company either in New Zealand in New Zealand currency or in Australia in the equivalent amount in Australian currency at the time of payment.

25. Any notice consent requirement or writing authorised or required by this agreement to be given or sent shall be deemed to have been duly given or sent by the Crown or the Minister (as the case may be) if signed by the Minister and forwarded by prepaid post to the Company at its registered office and by the Company if signed on behalf of the Company by the managing director, a director, general manager, secretary, or attorney of the Company and forwarded by prepaid post to the Minister at his office at Wellington and any such notice consent requirement or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

26. The 1960 Agreement and all agreements and undertakings by the Company arising thereout or incidental thereto are cancelled as from the date upon which this agreement shall take effect pursuant to clause 27 hereof.

27. The Crown will take all such action as may be necessary to validate this agreement, the Crown's operations and the Company's rights hereunder (including but without limiting the generality of the foregoing any authorisation which may from time to time be necessary or expedient under the provisions of any Act) and this agreement shall take effect from the date on which it is declared by Act of the General Assembly of New Zealand in Parliament assembled to be valid and binding in all respects and to have full force and effect according to its tenor.

28. This agreement shall continue in operation until the 30th day of June, 2060.

29. This agreement shall be governed by New Zealand law.

SCHEDULE TO THE AGREEMENT

1. All references in this Schedule to "the agreement" shall be deemed to be references to the agreement to which this Schedule is appended.

2. Unless the context otherwise requires:—

(a) Words and phrases to which a meaning is assigned in the agreement shall have the same meaning wherever used in this Schedule; and

(b) In this Schedule the words and phrases following shall have the meanings respectively assigned to them namely:—

"agreed interest rate" means (subject to clause 12 hereof) the total of:—

(i) the weighted average effective percentage rate of interest (as certified by the Controller and Auditor-General) of external long term borrowing made by the New Zealand Government during the period between the date of the agreement and the date on which the first generating unit to be installed by the Crown at the power station at Lake Manapouri is installed and ready for use; and

(ii) one-twelfth of one per cent:

"Capital Account No. 1" means a special capital account established by the Crown for the purpose of this Schedule and made up as hereinafter provided:

"Capital Account No. 2" means a special capital account established by the Crown for the purpose of this Schedule and made up as hereinafter provided:

"construction period" means in respect of any item the period during which interest during construction is calculated in respect of expenditure on that item as described in the definition of interest during construction:

"development of the water resources" means the development of the water resources for the production of electrical power and includes the works necessary for the generation of that power and for its transmission from a power station at

Lake Manapouri by direct route to a point in the Bluff-Invercargill area all of which are to be carried out generally on the basis of the January reports unless otherwise mutually agreed:

"effective percentage rate of interest" means in the case of each long term borrowing the actual fixed annual percentage rate of interest applying to that long term borrowing and fixed at the time the same is arranged but adjusted having regard to the period of the borrowing to take into account:—

(i) any difference (by way of discount or premium on parity) between the amount then agreed to be advanced by the lender and the amount then agreed to be repaid by the New Zealand Government; and

(ii) the costs and expenses relating directly to the arrangement of the borrowing and incurred at the time the borrowing is arranged:

"financial year" means the financial year for the time being of the New Zealand Electricity Department:

"generating unit" means a turbine and generator together with transformers, switch gear, and other equipment ancillary to or necessary or expedient for the operation of that generator:

"interest during construction" in respect of any amount of capital expenditure means interest at the agreed interest rate (compounded annually on the last day of each financial year) on the amount of that expenditure from the beginning of the fourth month in the half of the financial year in which the amount is expended until the first generating unit to be installed by the Crown at the power station at Lake Manapouri is installed ready for use or in the case of expenditure on items not then ready for use until the respective times when they are ready for use:

"long term borrowing" means all borrowings for a term of not less than ten years and a borrowing shall include a conversion or renewal of an existing loan but shall not include any borrowing from the International Bank for Reconstruction and Development except to the extent that that borrowing is made for the development of the water resources:

"notified kilowatt" means a kilowatt of continuous electrical power for which the Company is obliged for the time being to pay under the provisions of the agreement:

"operating and maintenance costs" means the average annual operating and maintenance costs of the works constructed for the development of the water resources determined from time to time pursuant to clause 13 hereof:

"Reserve Capacity Account" means a special capital account established by the Crown for the purpose of this Schedule and made up as hereinafter provided:

"the depreciation period" means the period commencing:—

(a) in respect of each of the items (other than the items mentioned in paragraph (b) of clause 5 hereof) in relation to which debits are made in Capital Account No. 1 or Capital Account No. 2 at the end of the relevant construction period; and

(b) in respect of each of the items mentioned in paragraph (b) of clause 5 hereof the date on which those items are debited to Capital Account No. 1

and ending in the case of items in Capital Account No. 1 eighty years and in the case of items in Capital Account No. 2 forty years after the commencement of that period:

"total installed capacity" means the total for the time being of the number of kilowatts of electrical power in the greater of:—

(a) 300 megawatts; and

(b) the total rated continuous capacity of all generating units installed at the power station at Lake Manapouri other than any generating unit which is for the purpose of clause 7 hereof deemed to be a reserve generating unit:

"total progressive capital investment" means the total for the time being of the net debit balances in Capital Account No. 1 and Capital Account No. 2.

3. For the purposes of this Schedule an item shall be deemed to be ready for use when that item and any other item or items which may be necessary or requisite for use in association with that first-mentioned item for the production and transmission of electrical power are completed and integrated in such a manner as will enable that production and transmission to be commenced.

4. The price payable by the Company for electrical power under the agreement shall be based on a yearly amount (hereinafter called "the yearly kilowatt price") for each notified kilowatt.

5. The Crown shall debit Capital Account No. 1 with the following amounts item by item:—

(a) at the end of the construction period relating to any particular item within the categories listed in Part I of the Inventory appearing at the foot hereof (or at such later time as any of them is respectively expended) capital amounts expended by the Crown (from time to time since the 31st day of January, 1963 and thereafter until the expiration or sooner determination of the term of the agreement) on that item and expended directly and necessarily in connection with the development of the water resources together with interest during construction in respect of those capital amounts;

(b) as at the date when the first generating unit to be installed by the Crown at the power station at Lake Manapouri is installed ready for use the capital amount payable to the Company under clause 15 or under clause 16 of the agreement and the capital amount which may be payable to the Company under clause 17 of the agreement together with interest on the said amounts at the agreed interest rate compounded annually on the last day of each financial year as from the date of the agreement until the date on which they are so debited; and

(c) at the end of the construction period relating to any particular item not within any of the categories listed in Part I of the Inventory appearing at the foot hereof (or at such later time as any of them is respectively expended) capital amounts expended by the Crown (from time to time since the 31st day of January, 1963 and thereafter until the expiration or sooner determination of the term of the agreement) on that item if the capital amounts concerned have been expended directly and necessarily

in connection with the development of the water resources, and the parties agree that it is appropriate that the item concerned should be included in Part I, together with interest during construction in respect of those capital amounts.

Notwithstanding anything hereinbefore in this clause contained Capital Account No. 1 shall not be debited with any amount expended by the Crown on or in connection with the repair, reinstallation, replacement or re-equipment of any item except in any case where such repair, reinstallation, replacement or re-equipment is necessitated by fair wear and tear of the item concerned and is not necessitated as a result of fire, flood, storm or tempest or any other Act of God or any other cause beyond the control of the Crown.

The term "Shoreline treatment" in Part I of the Inventory appearing at the foot hereof shall include any measures taken to preserve natural scenery and to raise the low lying areas of Te Anau township. Notwithstanding the capital amounts expended by the Crown on the said measures the amounts debited to Capital Account No. 1 shall not, except as otherwise may be agreed between the Minister and the Company, exceed the net amount which the Company would have been obliged to expend for these purposes if—

(i) the 1960 Agreement had continued in force; and

(ii) the Company had exercised its powers under that agreement so as to control the levels of Lakes Manapouri and Te Anau as indicated in the letters signed by the Honourable W. S. Goosman, Minister of Works and the letters signed by Mr D. J. Hibberd, Director of Consolidated Zinc Proprietary Limited, copies of which are set out in the Appendix hereto; and

(iii) the Company had carried out its intentions expressed in clause 22 of the 1960 Agreement in relation to the preservation of the scenic qualities of the said lakes and certain rivers and had complied with the requirements made by the Minister of Works pursuant to that clause which requirements are set out in his said letters.

6. The Crown shall debit Capital Account No. 2 with the following amounts item by item:

(a) at the end of the construction period relating to any particular item within the categories listed in Part II of the Inventory appearing at the foot hereof (or at such later time as any of them is respectively expended) capital amounts expended by the Crown (from time to time since the 31st day of January, 1963 and thereafter until the expiration or sooner determination of the term of the agreement) on that item and expended directly and necessarily in connection with the development of the water resources together with interest during construction in respect of those capital amounts PROVIDED ALWAYS that amounts which pursuant to clause 7 hereof are to be debited to the Reserve Capacity Account shall be debited to Capital Account No. 2 only as and when provided by that clause; and

(b) at the end of the construction period relating to any particular item not within any of the categories listed in Part II of the Inventory appearing at the foot hereof (or at such later time as any of them is respectively expended) capital amounts expended by the Crown (from time to time since the 31st day of January, 1963 and thereafter until the expiration or sooner determination of the term of the agreement) on that item if the capital

amounts concerned have been expended directly and necessarily in connection with the development of the water resources, and the parties agree that it is appropriate that the item concerned should be included in Part II, together with interest during construction in respect of those capital amounts.

Notwithstanding anything hereinbefore in this clause contained Capital Account No. 2 shall not be debited with any amount expended by the Crown on or in connection with the repair, reinstallation, replacement or re-equipment of any item except in any case where such repair, reinstallation, replacement or re-equipment is necessitated by fair wear and tear of the item concerned and is not necessitated as a result of fire, flood, storm or tempest or any other Act of God or any other cause beyond the control of the Crown.

7. (a) The Crown shall debit the Reserve Capacity Account item by item at the end of the construction period relating to the particular item concerned with capital amounts expended by the Crown (from time to time since the 31st day of January, 1963 and thereafter until the expiration or sooner determination of the term of the agreement) on or in connection with the acquisition and installation of any generating unit which for the purpose of this clause is deemed to be a reserve generating unit together with interest during construction in respect of those capital amounts.

(b) The Crown shall credit the Reserve Capacity Account and debit Capital Account No. 2 with the total amount debited pursuant to paragraph (a) of this clause in respect of a generating unit if and when that generating unit ceases (but not later than the end of the depreciation period relating thereto) to be deemed to be a reserve generating unit for the purpose of this clause.

(c) In this clause a generating unit installed by the Crown at the power station at Lake Manapouri which is not deemed to be a reserve generating unit is referred to as an "operating generating unit".

(d) If at the time when a generating unit is first installed ready for use the total continuous rated capacity of all operating generating units previously installed equals or exceeds the total capacity for the time being required for the supply of electrical power produced from the water resources then for the purpose of this clause that generating unit shall be deemed to be a reserve generating unit PROVIDED THAT if more than one generating unit is first installed ready for use at the same time those generating units shall be deemed to have been so installed in succession in such order as the Crown may nominate.

(e) A generating unit shall cease to be deemed to be a reserve generating unit if at any time the electrical power produced from the water resources exceeds the continuous rated capacity of all operating generating units PROVIDED THAT if there shall at that time be more than one reserve generating unit then only such one or more of the reserve generating units shall cease to be deemed to be reserve generating units as may be necessary to ensure that the total continuous rated capacity of the operating units shall not be less than the capacity required for the supply of electrical power produced from the water resources and in such a case generating units shall cease to be deemed to be reserve generating units in the order in which they have been installed unless the parties otherwise agree.

(f) The provisions of this clause shall not have the effect of extending the end of the depreciation period in respect of any item debited initially to the Reserve Capacity Account and later to Capital Account No. 2 as herein provided beyond the time forty years after the end of the construction period relating to that item.

8. (a) The Crown shall credit Capital Account No. 1 or Capital Account No. 2 as the case may require with the total amount debited to that account in respect of any item at the end of the depreciation period PROVIDED ALWAYS that should any item be sold or disposed of before the end of the depreciation period then the Crown shall credit Capital Account No. 1 or Capital Account No. 2 as the case may require with the total amount debited to that Account in respect of that item at the time when had a depreciation account been established as mentioned in paragraph (b) of this clause the credit in respect of that item in that depreciation account would have equalled the total debit in respect thereof in Capital Account No. 1 or Capital Account No. 2 as the case may be.

(b) The depreciation account referred to in paragraph (a) of this clause is one which would have been established and maintained as follows item by item in respect of all items in respect of which a debit is at any time made to Capital Account No. 1 or Capital Account No. 2:—

(i) the account would have been credited with interest at the rate of 5% (compounded annually) on all amounts credited thereto under subparagraphs (ii) and (iii) of this paragraph;

(ii) the account would have been credited annually commencing at the end of the year following the construction period with such equal amounts as would be necessary having regard to the said interest to provide at the end of the depreciation period an amount equal to the total amount debited to Capital Account No. 1 or Capital Account No. 2 in respect of the item;

(iii) the account would have been credited with the amounts and the value of other considerations obtained by the Crown from time to time from the sale or disposal of any item or any part thereof as and when received by the Crown.

9. (a) The Crown shall render an account to the Company for the amount payable for the notified kilowatts at the beginning of each calendar quarter in respect of the preceding quarter and each account shall be payable at the New Zealand Electricity Department's office at Invercargill within one month after it is received by the Company at its office at Bluff or elsewhere as may be agreed.

(b) The amount payable in respect of any quarter for each notified kilowatt shall be a proportion of the yearly kilowatt price equal to the proportion which the number of days in that quarter in respect of which the Company is obliged to pay under the terms of the agreement for that notified kilowatt bears to the total number of days in the year PROVIDED ALWAYS that in any case where immediately after the end of a particular quarter it is not possible to calculate accurately the yearly kilowatt price or the number of notified kilowatts because some or all of the components of either or both of the same are not then known a pro forma account shall be rendered with either or both (as the case may be) the yearly kilowatt price and number of notified kilowatts estimated as accurately as is then possible and the amount of the pro forma account shall be adjusted in the quarterly account next after all

components are known. In the event of it being necessary to estimate the number of notified kilowatts because the exact number in any block of electrical power has not at the time been determined under clause 8 of the agreement then the number of notified kilowatts in that block shall for the purpose of the pro forma account be estimated as the number stated in the notice given by the Company requiring supply of that block.

10. The yearly kilowatt price shall be the sum A + B + C + D + E; where:—

A is the sum of

$$\frac{\text{The net total debit balance in Capital Account No. 1}}{\text{Total installed capacity}} \times \cdot 00102962$$

and

$$\frac{\text{The net total debit balance in Capital Account No. 2}}{\text{Total installed capacity}} \times \cdot 00827816$$

B equals

$$\frac{\text{Total progressive capital investment}}{\text{Total installed capacity}} \times \frac{\text{Agreed interest rate}}{100}$$

C equals (subject to the provisions of clause 13 hereof)

$$\frac{\text{Operating and maintenance costs}}{\text{Total installed capacity}}$$

D is the licence fee

and

E is a fixed contingency fee of two shillings and six pence.

11. The yearly kilowatt price shall be calculated as at the beginning of each quarter with the amounts of A, B, C and D (as referred to in clause 10 hereof) determined as at that time and the price so calculated shall apply in respect of that quarter.

12. Forthwith after the period ending on the First day of April, 1999 and at the end of each successive period of thirty years thereafter the weighted average effective percentage rate of interest shall be recalculated and determined in respect of external long term borrowing made by the New Zealand Government during the last five years of the period then ended and the weighted average effective percentage rate of interest so recalculated and determined (as certified by the Controller and Auditor-General) shall apply during the then ensuing period of thirty years PROVIDED ALWAYS that if there has been no long term external borrowing by the New Zealand Government during the relevant period of five years the weighted average effective percentage rate of interest shall (unless otherwise agreed) be the weighted average effective percentage rate of interest (as certified by the Controller and Auditor-General) of long term borrowing made by the New Zealand Government during that five years.

13. (a) From the date when the Company is first obliged to pay for electrical power under the agreement until the end of the fifth complete financial year after that date the amount of C (as referred to in clause 10 hereof) shall be ten shillings.

(b) At the end of that fifth complete financial year and at the end of every fifth financial year thereafter the parties will consult and endeavour to agree upon the average actual annual operating and maintenance costs in the preceding five financial years of the works constructed for the development of the water resources and in default of agreement the same shall be determined by reference to arbitration under clause 21 of the agreement. The amount so agreed or determined shall for the purpose of this Schedule be the operating and maintenance costs for the five financial years next ensuing. In determining the said average actual annual operating and maintenance costs:—

(i) any amounts expended in relation to the replacing, reinstalling or re-equipping of any of the said works or any part or parts thereof shall be deemed to be capital amounts and not operating and maintenance costs unless the parties otherwise agree;

(ii) any amounts expended in relation to the repairing of any damage to or defect in the said works or any part or parts thereof due to causes other than fair wear and tear shall be excluded; and

(iii) there shall be included an allowance for a fair and reasonable proportion of the general overhead costs of the New Zealand Electricity Department.

(c) The licence fee referred to in component D of the formula set out in clause 10 hereof shall be an annual amount of two shillings per notified kilowatt adjusted up or down as the case may be at the end of the fifth complete financial year referred to in paragraph (a) of this clause and at the end of every fifth financial year thereafter proportionately to the variation of the average in New Zealand currency equivalent to the prices for Canadian primary aluminium of 99½ per cent purity f.o.b. Toronto published in the London Metal Bulletin nearest the dates of 31st March, 30th June, 30th September, 31st December immediately preceding the due date of the adjustment from the price of £180 sterling per long ton.

14. Clause 21 of the agreement shall apply to this Schedule as if incorporated herein PROVIDED ALWAYS that the parties hereto shall at all times meet in consultation and use their best endeavours to reach agreement before proceeding to arbitration.

15. Clauses 25 and 29 of the agreement shall apply to this Schedule as if incorporated herein.

16. (a) In the event of the transfer by the Company of the whole of its rights and obligations under the agreement or the whole of its said rights and obligations, save and except its rights under clauses 15, 16 and 17 of the agreement pursuant to clause 23 thereof the rights and obligations of the Company under this Schedule (other than any existing obligation of the Company to pay to the Crown any sum of money then due) shall be deemed to be transferred forthwith to the transferee of the said rights and obligations under the agreement.

(b) In the event of the transfer by the Company of part of its rights and obligations under the agreement (other than its rights under clauses 15, 16 and 17 thereof) in manner provided in clause 23 thereof the Company will arrange for the transferee to enter into an agreement with the Crown on the same terms (mutatis mutandis) as are herein contained with regard to the price to be paid for electrical power to be

supplied by the Crown to the transferee from the power station at Lake Manapouri and therefrom the obligations of the Company hereunder shall be commensurately reduced.

17. If at any time the Company advises the Crown in writing that due to unforeseen circumstances, use by the Company of electrical power in its operations, or undertakings at the price calculated under this Schedule has become uneconomic for the Company then within ninety days after receipt by the Crown of this advice the parties will confer with a view to formulating a plan whereby the Company's problems in that regard may be overcome.

18. On making any payment to the Company pursuant to clauses 15, 16 and 17 of the agreement the Crown shall also pay to the Company interest on the amount of that payment computed from the date of the agreement to the date of payment at the agreed interest rate compounded annually on the last day of each financial year.

19. All monetary amounts (other than the amount of £180 sterling referred to in paragraph (c) of clause 13 hereof) referred to in this Schedule or calculated pursuant to its provisions are or shall be in terms of New Zealand currency.

20. This Schedule may be varied by written agreement between the Minister and the Company.

THE INVENTORY HEREINBEFORE REFERRED TO

THE categories listed in this Inventory are in respect of items directly connected with the development of the water resources.

PART I

Power house.
Access and conductor shafts.
Dams.
Intakes, pressure shafts and penstocks.
Tailrace tunnel.
Roads and bridges.
Shoreline treatment.

PART II

Generating units.
Switchgear and control equipment.
Transmission lines.
Outdoor switching stations.
Housing.

THE APPENDIX HEREINBEFORE REFERRED TO

CONSOLIDATED ZINC PROPRIETARY LIMITED.
53–59 Flemington Road,
NORTH MELBOURNE, N.1.
April 12th 1961.

The Minister of Works,
Parliament House,
WELLINGTON. N.Z.

My dear Minister,

We have been advised that, under existing conditions, certain low-lying areas of Te Anau township are subject to flooding, to becoming swampy and to carrying surface water. We understand that the Ministry of Works estimates at approximately £100,000 the cost of raising these areas, and the improvements on them, to a height which would leave them clear of water when the lake is at the level of the datum point proposed to be fixed under the agreement (20 feet on the lake gauge).

It has already been indicated to you that, when our studies are complete, it may be found to be practicable for the maximum level of Lake Te Anau to be fixed at a lower point than this datum. If this should prove to be the case, it is assumed that the amount of work required, and hence the cost of raising these areas above water level would be reduced if not eliminated.

We are pleased to confirm that when embarking on Stage II of the power development, we will accept as "rights acquired" under clause 7 of the agreement, and accordingly will meet the cost of, any work necessary to raise these areas, and the presently existing improvements to a height which will leave them clear of water when the lake rises to the maximum level then permitted under the agreement.

Yours faithfully,

(Sgd.) D. J. HIBBERD
Director.

CONSOLIDATED ZINC PROPRIETARY LIMITED.
53 Flemington Road,
North Melbourne,
AUSTRALIA.
12 April 1961

The Minister of Works,
Parliament House,
WELLINGTON.

My Dear Minister,

MANAPOURI - TE ANAU PROJECT LAKE LEVELS

Under the terms of the Agreement relating to the above project it is theoretically permissible for us to operate the lake system in a manner which would cause the level of Lake Manapouri to vary from almost the maximum level of Lake Te Anau to the minimum natural level determined in accordance with clause 6 (d).

We wish to confirm our assurance that we have no intention of operating the system in this manner, and indeed it would be quite contrary to our interests to do so. We are quite willing that the terms of the Agreement should be amended so as to define appropriately the

range within which Lake Manapouri is to be maintained after its level has been raised as the result of any works we may construct after Stage 1 of this project.

At the present stage of the investigation it is not known to what height Manapouri will be raised, and it is therefore not possible to fix a new minimum level to replace the "minimum natural level" fixed under clause 6 (d). Moreover it is expected that the need for this new level will not be reached for a considerable number of years.

In these circumstances we would suggest that the Company for its part and you as Minister on behalf of the Government now place on record our mutual agreement, as soon as sufficient facts are known to enable this to be done, and in any event before the Company proceeds beyond Stage 1, to vary the Agreement in accordance with the principles set out under the following paragraphs of this letter, and to effect that variation formally in accordance with clause 25 of the Agreement.

In these circumstances, we would suggest that we should place on record now our mutual intention to amend the Agreement when sufficient facts are known, in accordance with the following principles:—

(1) The Company's right to raise the level of Lake Manapouri will remain limited to the datum level fixed under clause 6 (c) of the Agreement, and will be further limited under normal conditions to a new operating level to be determined;

(2) the Company shall use its best endeavours to prevent the lake rising above this new level, and in the event that abnormal conditions cause such a rise, it will so operate its works as to reduce the lake to the new level as rapidly as is practicable;

(3) the Company's right to lower the level of Lake Manapouri shall be limited to a new level to be nominated by the Company at not more than 27½ feet below the new level determined under paragraph (1);

(4) in emergency conditions the proviso to clause 6 (d) shall however continue to apply, but in relation to the new level fixed under paragraph (3).

It is not intended that the Company's right to raise Lake Manapouri by stages shall be in any way affected, and hence if this is decided upon, it will be necessary for new levels to be fixed as above in relation to each stage.

We also agree further study may indicate that it will be practicable to obtain more economic regulation of Lake Te Anau by making provision to draw the lake down below the "minimum natural level". This could permit a reduction of the datum level as defined in clause 6 (c) of the Agreement. It could also reduce the draw-down on Manapouri in unusually dry seasons. It is possible therefore that we may propose that the amendment to the Agreement should cover this aspect also, and we seek your agreement in principle to such a proposal.

Yours faithfully,

(Sgd.) D. J. HIBBERD
Director,

OFFICE OF THE MINISTER OF WORKS
WELLINGTON
26 April 1961

D. J. Hibberd, Esq.,
Director,
Consolidated Zinc Pty. Ltd.,
53–59 Flemington Road,
NORTH MELBOURNE,
Australia.

Dear Sir,

I write to advise you in respect of certain levels and of scenery protection requirements as provided for in the Manapouri-Te Anau Agreement.

1. *Lake Levels.*

In respect of clause 6c, the datum level is defined as R.L. 676·6 feet.

In respect of clause 6d, I advise that the lowest natural levels have been determined by survey as:—

for Lake Te Anau – 656·6 feet
for Lake Manapouri – 575·5 feet

All these levels are in terms of mean sea level at Deep Cove.

2. The requirements in relation to preservation of scenic qualities (clause 22) are as follows:—

(1) The following expressions are used below with respect to Lake Manapouri with the following meanings:—

(a) "lowest operating level":—the lowest level to which the Company may lower the lake without obtaining the consent of the Minister.

(b) "highest retention level":—the new operating level to be fixed as set out in the Company's letter of 12 April 1961.

(c) "lower level":—a level which, for navigational and scenic reasons, is set 5 feet below the lowest operating level.

(d) "upper level":—a level which, to allow for the effects on vegetation, is set three feet above the highest retention level.

(2) Trees which will be completely below the lower level of Lake Manapouri may be left untouched except that approach channels with a clear depth of 10 feet shall be cleared to all jetties constructed by the Company.

(3) Trees growing below the lower level of Lake Manapouri but projecting above it shall be topped at or below that level.

(4) Between the lower level and the highest retention level of Lake Manapouri—

(a) where slopes are generally less than 1 in 7 or are otherwise accessible for mechanical clearing, all trees, stumps and scrub shall be cleared and either burnt to ashes or removed.

(b) Where clearance by mechanical means is impracticable all trees and scrub shall be cut close to ground level and together with stumps exceeding 24 inches in diameter shall be burnt to ashes or removed.

(c) Where the slopes are generally steep, i.e. of the order of 1 to $1\frac{1}{2}$ (say 35°) or greater, no treatment is required until the effect of raising the lake level has been observed over a period of up to three years, when fallen trees, scrub and remaining trees shall be dealt with as provided in subparagraph (b).

(5) Between the highest retention level and the upper level of Lake Manapouri all dead and dying scrub and trees shall be removed, but the Company may if it so elects treat any part of this zone in the manner provided in paragraph 4.

(6) (a) The following expressions are used in this letter with respect to Lake Te Anau with the following meanings:—

(i) "maximum control level"—the highest level to which the lake is to be permitted to rise under controlled conditions,

(ii) "upper level"—a level three feet above the maximum control level.

(b) On completion of any works by means of which the level of Lake Te Anau may be controlled the Company shall notify the Minister of the maximum control level, and thereafter shall notify the Minister forthwith if any change is made in the maximum control level.

(c) Whenever the lake rises above the maximum control level, the Company shall so operate its works as to reduce the lake to that level as rapidly as practicable and shall use its best endeavours to prevent such a rise.

(d) Below the upper level of Lake Te Anau all dead and dying scrub and trees shall be removed, but the Company may, if it so elects, treat any part of this zone in the manner provided in para. 4.

(7) Where an existing jetty, or hut is inundated a new jetty or hut as the case may be, of similar standard and capacity, shall be constructed in an appropriate location as near as may to that of the original location, in consultation with the Fiordland Park Board.

(8) Attractive picnic places will be provided for the public around the shores of the lakes at sites selected in consultation with the Fiordland Park Board. This is in accordance with the Company's offer which is appreciated.

(9) Where there exist areas which will, when the level of Lake Manapouri lies between the lowest operating and highest retention levels. be more than 2 chains from the lake shoreline (including island shorelines) and over which there may be less than 10 clear feet of water, these areas shall be either marked by beacons, indicated by notices or shown on a published chart of the lake, as may be agreed in each case between the Company and the Minister.

(10) At each jetty or wharf constructed by the Company there shall be erected fixed gauge boards so marked as to show the level of Lake Manapouri in relation to the lowest operating level.

(11) In relation to any stage of development the action to be taken by the Company pursuant to these requirements shall be completed within a period of 5 years after the date on which the lake first reaches the highest retention level or maximum control level as the case may be.

(12) On completion to his satisfaction of the necessary work in relation to any stage of development the Minister will give to the Company a certificate of completion and thereafter the Company shall have no further responsibility pursuant to these requirements in relation to that change.

(13) In the course of our discussions, the Company offered to make available to the Fiordland Park Board the sum of £5,000 a year for a period of 5 years after the grant of the certificate of completion relating to the Stage II of the project so that the Board may carry out such maintenance and further work as it considers desirable. This offer is a generous one, which it is felt will be welcomed by the Board.

3. I refer now to your letter of 12 April in which you confirmed on behalf of your Company your willingness to meet the cost of any work necessary to raise the lowlying areas of Te Anau when embarking on Stage II of the power development.

Your offer is gladly accepted by the Government in the terms set out in your letter.

4. Your further letter of 12 April which discussed the matter of the operating range in Lake Manapouri is acknowledged. Your proposals set out therein are generally acceptable and will be the subject of a further letter within the next few days.

5. I take this opportunity of expressing the goodwill of the Government towards you and your partners in the development of these resources.

Yours faithfully,

(Sgd.) W. S. GOOSMAN
Minister of Works.

OFFICE OF THE MINISTER OF WORKS
WELLINGTON
28 April 1961

D. J. Hibberd, Esq.,
Director,
Consolidated Zinc Pty. Ltd.,
P.O. Box 384D,
MELBOURNE C. 1.
Australia.

Dear Sir,

I now write further in respect of your letter of 12 April which discussed the proposed amendment to the Agreement in respect of the operating range in Lake Manapouri.

That letter has already been acknowledged and generally accepted in my advice to you of 26 April 1961.

Your letter has been carefully considered by Cabinet. Government is pleased to receive the confirmation of your assurance that your Company has no intention of operating the lake system in a manner which would cause the level of Lake Manapouri to vary from almost the maximum level of Lake Te Anau to the minimum natural level determined in accordance with clause 6 (d) of the Agreement. Government is appreciative of the Company's willingness to amend the Agreement so as to define appropriately the range within which Lake Manapouri is to be maintained after its level has been raised as the result of any works the Company may construct after Stage I of the Manapouri development, and on behalf of the Government I am pleased to confirm our mutual agreement with the Company as soon as sufficient facts are known to enable it to be done, and in any event before the Company proceeds beyond Stage I to vary the Agreement in accordance with the principles set out in your letter, namely:—

"(1) The Company's right to raise the level of Lake Manapouri will remain limited to the datum level fixed under clause 6 (c) of the Agreement, and will be further limited under normal conditions to a new operating level to be determined;

(2) The Company shall use its best endeavours to prevent the lake rising above this new level, and in the event that abnormal conditions cause such a rise, it will so operate its works as to reduce the lake to the new level as rapidly as is practicable;

(3) The Company's right to lower the level of Lake Manapouri shall be limited to a new level to be nominated by the Company at not more than 27½ feet below the new level determined under paragraph (1);

(4) In emergency conditions the proviso to clause 6 (d) shall however continue to apply, but in relation to the new level fixed under paragraph (3).

It is not intended that the Company's right to raise Lake Manapouri by stages shall be in any way affected, and hence if this is decided upon, it will be necessary for new levels to be fixed as above in relation to each stage."

The Government appreciates that in the planning of the project for stage development, the Company would have the right to nominate the new upper level as well as the new lower level, always provided that those levels are within the limits set by the Te Anau datum level and the maximum range of 27½ feet.

With reference to the last paragraph of your letter, Government is interested in, and agrees in principle with, the desirability of investigating the practicability of making provision for Lake Te Anau to be drawn down below the "minimum natural level"; and I look forward to your further advice in this regard.

I take this opportunity of expressing the Government's appreciation of the Company's helpful attitude as expressed in the letter under reply.

Yours faithfully,

(Sgd.) W. S. GOOSMAN
Minister of Works.

OFFICE OF THE MINISTER OF WORKS
WELLINGTON
28 April 1961

D. J. Hibberd, Esq.,
Director,
Consolidated Zinc Pty Ltd,
P.O. Box 364D,
MELBOURNE, C. 1.
Australia.

Dear Sir,

Will you please refer to my letter of 26 April 1961 which defines certain levels and advises the Government requirements in respect of preservation of scenic qualities.

In that letter the last word of paragraph 2.12 should be "stage" not "change"; moreover the following words should be added to that paragraph following the word "stage":—

"except to the extent that at any time thereafter damage may be caused to vegetation as the result of the Company's negligence in the operation of its works".

I would be grateful if you would note the above modifications.

Yours faithfully,

(Sgd.) W. S. GOOSMAN
Minister of Works.

CONSOLIDATED ZINC PROPRIETARY LTD
53–59 Flemington Road,
North Melbourne
P.O. Box 384D, MELBOURNE.
3 May 1961

The Minister of Works,
Parliament House,
WELLINGTON,
New Zealand.

Dear Mr Minister,

MANAPOURI - TE ANAU AGREEMENT

I write to acknowledge receipt of your letter dated 26th April 1961, in which you advised the datum level under clause 6 (c), the minimum natural levels of Lakes Te Anau and Manapouri under clause 6 (d), and your requirements in relation to the preservation of the scenic qualities of the lakes under clause 22 of the above agreement. I also acknowledge your letter of 28th April which advised certain modifications of paragraph 2.12 of that letter.

The matters set forth in these two letters have been duly noted, and I formally confirm the offers made by the Company as set out in your paragraphs 8 and 13.

The expression of your Government's goodwill towards us in the development of these resources is greatly appreciated by myself and my colleagues, and I should like to convey to you also the Company's appreciation of the unfailing courtesy and understanding which have been shown to its representatives, both by members of the Government and the various departmental officers with whom we have discussed our problems.

Yours faithfully,
(Sgd.) D. J. HIBBERD
Director.

IN WITNESS WHEREOF this agreement has been executed the day and year first hereinbefore written.

SIGNED for and on behalf of Her Majesty the Queen in respect of the Government of New Zealand by William Stanley Goosman the Minister of Electricity in the presence of:— W. S. Goosman

E. B. Mackenzie
General Manager
New Zealand Electricity Department
Wellington

THE COMMON SEAL OF CONSOLIDATED ZINC PROPRIETARY LIMITED was hereto affixed in the presence of:— [L.S.]

M. Mawby
Director of Conzinc Riotinto of Australia Limited
D. J. Hibberd
Director of Conzinc Riotinto of Australia Limited
Peter Fitzgerald
Secretary

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