

13 of 1977

IN THE PRIVY COUNCIL

No. 23 of 1976

O N A P P E A L
FROM THE FULL COURT OF THE SUPREME COURT OF VICTORIA

IN THE MATTER OF SECTION 304 OF THE LOCAL GOVERNMENT
ACT 1908

- and -

IN THE MATTER OF AN APPEAL THEREUNDER BY B.P.REFINERY
(WESTERNPORT) PROPRIETARY LIMITED

B E T W E E N :

B.P. REFINERY (WESTERNPORT) PROPRIETARY
LIMITED

Appellant

- and -

THE PRESIDENT COUNCILLORS AND RATEPAYERS
OF THE SHIRE OF HASTINGS

Respondents

RECORD OF PROCEEDINGS

LINKLATERS & PAINES,
Barrington House,
59-67, Gresham Street,
London, EC2V 7JA.

Solicitors for the Appellant

SIMMONS & SIMMONS,
14, Dominion Street,
London,
EC2M 2RJ.

Solicitors for the Respondents

IN THE PRIVY COUNCILNo. 23 of 1976O N A P P E A LFROM THE FULL COURT OF THE SUPREME COURT OF VICTORIAIN THE MATTER OF SECTION 304 OF THE LOCAL GOVERNMENT
ACT 1958

- and -

IN THE MATTER OF AN APPEAL THEREUNDER BY B.P. REFINERY
(WESTERNPORT) PROPRIETARY LIMITED

B E T W E E N:

BP REFINERY (WESTERNPORT) PROPRIETARY
LIMITEDAppellant

- and -

THE PRESIDENT COUNCILLORS AND RATEPAYERS
OF THE SHIRE OF HASTINGSRespondentsRECORD OF PROCEEDINGSINDEX OF REFERENCE

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O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF VICTORIA

IN THE MATTER OF SECTION 304 OF THE LOCAL GOVERNMENT
ACT 1958

- and -

IN THE MATTER OF AN APPEAL THEREUNDER BY B.P. REFINERY
(WESTERNPORT) PROPRIETARY LIMITED

B E T W E E N:

B.P. REFINERY (WESTERNPORT) PROPRIETARY
LIMITED

Appellant

- and -

THE PRESIDENT COUNCILLORS AND RATEPAYERS
OF THE SHIRE OF HASTINGS

Respondents

RECORD OF PROCEEDINGS

No. 1

Case stated by His Honour Judge
Southwell dated 15th October 1975

In the full
Court of the
Supreme Court
of Victoria

No. 1

IN THE FULL COURT OF THE)
SUPREME COURT OF VICTORIA)

CASE STATED BY THE COUNTY)
COURT AT MELBOURNE)

Case stated
by His Honour
Judge
Southwell

IN THE MATTER of Section 304
of the Local Government Act 1958

15th October
1975

- and -

IN THE MATTER of an Appeal
thereunder by BP REFINERY
(WESTERNPORT) PROPRIETARY
LIMITED

B E T W E E N :

BP REFINERY (WESTERNPORT) PROPRIETARY
LIMITED

Appellant

In the Full
Court of the
Supreme Court
of Victoria

- and -

THE PRESIDENT COUNCILLORS AND
RATEPAYERS OF THE SHIRE OF HASTINGS Respondent

No. 1

CASE STATED BY HIS HONOUR JUDGE SOUTHWELL

Case stated
by His Honour
Judge
Southwell

15th October
1975
(continued)

A. BP Refinery (Westernport) Proprietary Limited appealed to the County Court against a rate made by The President, Councillors and Ratepayers of the Shire of Hastings upon BP Refinery (Westernport) Proprietary Limited in respect of the year 1973-1974. A true copy of the Notice of Appeal by BP Refinery (Westernport) Proprietary Limited is contained in Schedule AA hereto.

10

B. The following facts agreed to by the parties prior to the hearing of the Appeal, are found by me:-

1. THE Appellant is and was at all material times a company duly incorporated pursuant to the laws of the State of Victoria.

2. AT all material times prior to 17th March 1970 the Appellant was the registered proprietor of all those pieces of land previously comprised and described in Certificates of Title Volume 7048 Folio 587, Volume 7290 Folio 836, Volume 7408 Folio 468, Volume 8047 Folio 497, Volume 8127 Folio 739, Volume 4075 Folio 904 and Volume 5389 Folio 641 and now comprised and described in Certificate of Title Volume 8519 Folio 769 (hereinafter called "the refinery site").

20

3. THE refinery site is and has at all material times been within the municipal district of the Respondent.

30

4. ON 15th May 1963 the Appellant entered into an agreement with the State of Victoria relating to the establishment of an oil refinery upon the refinery site and the construction of port facilities and such agreement (hereinafter called "the refinery agreement") was thereafter ratified by the Westernport (Oil Refinery) Act 1963.

5. ON 7th May 1964 the Appellant was the occupier of and liable to be rated in respect of the refinery site.

40

6. ON 7th May 1964 the Appellant and the Respondent entered into a rating agreement pursuant to the Local Government (Decentralized Industries) Act 1963 (hereinafter called "the rating agreement"). A true copy of the rating agreement is contained in Schedule A hereto.

In the Full Court of the Supreme Court of Victoria

No. 1

7. ON 26th May 1964 the rating agreement was approved by Order of the Governor in Council published in the Government Gazette of the State of Victoria. A true copy of that Order as so published is contained in Schedule B hereto.

Case stated by His Honour Judge Southwell

15th October 1975

(continued)

8. THEREAFTER until 31st December 1969 the Appellant remained the occupier of and liable to be rated in respect of the refinery site, and during that period the refinery site was assessed at a rate calculated in accordance with the rating agreement.

9. AT an extraordinary General Meeting of the Appellant duly held on 31st December 1969 it was resolved by special resolution that the Appellant be wound up voluntarily and further that Victor George Henry Harrison be appointed Liquidator (hereinafter called "the Liquidator"). The said winding-up was a members' voluntary winding up.

10. ON 1st January 1970 BP Australia Limited went into occupation of the refinery site and continued to occupy it until 27th September 1973 and during that period the refinery site was assessed not at a rate calculated in accordance with the rating agreement but at a rate calculated in the manner otherwise applicable to the Respondents' general rate. The rates so assessed were assessed upon and were paid by BP Australia Limited and during that period no rates were assessed upon or paid by the Appellant in respect of the refinery site.

11. CERTAIN correspondence took place between the Appellant, the Respondent and BP Australia Limited concerning the effect of the change of occupancy upon the operation of the rating agreement shortly before and shortly after that change took place. The correspondence comprised the following letters, true copies of which are contained in Schedule C hereto:-

(a) Appellant to Respondent dated 15th December 1969.

In the Full
Court of the
Supreme Court
of Victoria

No. 1

Case stated
by His Honour
Judge
Southwell

15th October
1975
(continued)

- (b) Respondent to Appellant dated 23rd December 1969.
- (c) Respondent to Appellant dated 9th February 1970.
- (d) BP Australia Limited to Respondent dated 26th February 1970.
- (e) Respondent to Appellant dated 14th April 1970.

12. BY a transfer dated 21st January 1970 and registered on 17th March 1970 the Liquidator transferred certain pieces of land including the refinery site to BP Australia Limited, and also transferred to BP Australia Limited the refinery buildings and plant on the refinery site and all of the Appellant's other assets, save for an amount of \$2,026.09 which was retained by the Liquidator and deposited by him with BP Australia Limited. Such transfers were a distribution of the Appellant's assets in specie. 10

13. ON 3rd February 1970 the Council of the Respondent passed a resolution concerning the rating agreement, the terms thereof being "That the Agreement be allowed to lapse". 20

14. FROM the commissioning date as defined in the refinery agreement until 31st December 1969 the Appellant complied with its obligations under clause 5 of the rating agreement. Between 1st January 1970 and 27th September 1973 the Appellant did not give to the Respondent any statements of the amount of the Appellant's capital expenditure upon the refinery site. Before the first Tuesday in December 1973 and 1974 respectively the Appellant gave to the Respondent statements certified by the Appellant's auditors of the amount of the Appellant's capital expenditure upon the refinery site including the amount of such expenditure during the 12 months preceding the date to which the accounts of the Appellant are made up, namely 31st December. 30

15. ON 25th September 1973 the Supreme Court of Victoria constituted by the Honourable Mr. Justice Crockett made an Order that the winding-up of the Appellant be perpetually stayed. A true copy of that Order is contained in Schedule D hereto. 40

16. BY a lease in writing made on 28th September 1973 between BP Australia Limited as Lessor and the Appellant as Lessee (hereinafter called "the Lease") BP Australia Limited demised the refinery site and the said buildings and plant to the Appellant from the date thereof for the term of 3 years. A true copy of that Lease is contained in Schedule E hereto.

In the Full
Court of the
Supreme Court
of Victoria

No. 1

Case stated
by His Honour
Judge
Southwell

15th October
1975
(continued)

10 17. PURSUANT to the Lease the Appellant resumed occupation of the refinery site and the said buildings and plant on 28th September 1973 and at all material times since has continued to occupy the same and been liable to be rated by the Respondent in respect thereof.

18. BY a notice dated 28th September 1973 the Appellant notified the Respondent that on that day it became the occupier of the refinery site. A true copy of that notice is contained in Appendix F hereto.

20 19. THE Respondent duly made a general rate for the whole of its municipal district for the year 1973/74.

20. BY a rating assessment notice dated 29th January 1974 and addressed to the Appellant, the Respondent assessed the refinery site at a general rate of \$154,960.00. A true copy of that rating assessment notice is contained in Appendix G hereto.

30 21. IF the amount of the rate payable for the year 1973/74 in respect of the refinery site is to be calculated in accordance with the rating agreement, such amount is \$50,000.00; if the amount of such rate is not to be calculated, such amount is \$154,960.00.

C. On 12th September 1975 I ordered that the Appeal be dismissed.

D. The Appellant required me to state the facts by way of special case for the determination of the Supreme Court thereon.

40 DATED the 15th day of October, 1975.

ALEC SOUTHWELL
JUDGE

In the Full
Court of the
Supreme Court
of Victoria

No. 2

Notice of Appeal - Schedule "AA"
to Case Stated dated 28th March 1974

No. 2

IN THE COUNTY COURT AT MELBOURNE

Notice of
Appeal
Schedule "AA"
to Case Stated

IN THE MATTER of the Local
Government Act 1958

- and -

28th March
1974

IN THE MATTER of an Appeal under
Section 304 of the said Act by
BP REFINERY (WESTERNPORT)
PROPRIETARY LIMITED

10

B e t w e e n :

BP REFINERY (WESTERNPORT)
PROPRIETARY LIMITED

Appellant

- and -

THE PRESIDENT, COUNCILLORS AND
RATEPAYERS OF THE SHIRE OF
HASTINGS

Respondent

NOTICE OF INTENTION TO APPEAL

and

NOTICE OF APPEAL

20

TAKE NOTICE that the abovenamed Appellant BP REFINERY (WESTERNPORT) PROPRIETARY LIMITED being aggrieved by the rate assessed by the abovenamed Respondent THE PRESIDENT, COUNCILLORS AND RATEPAYERS OF THE SHIRE OF HASTINGS on Property No.22780220 being Pts. 87, 88 and 89 The Esplanade Crib Point within the Bittern Riding of the municipal district of the Respondent the said rate so assessed appearing in Rate Notice No.1236 addressed to the Appellant a copy of which is annexed hereto and marked "A" INTENDS TO APPEAL pursuant to the provisions of the Local Government Act 1958 to the County Court at Melbourne at its next sittings to be held on the 1st day of May 1973 against the assessment of the said rate by the Respondent AND HEREBY APPEALS to the said Court at the said sittings against the said assessment as aforesaid

30

THE following are the grounds upon which the Appellant intends to appeal and appeals namely:-

In the Full Court of the Supreme Court of Victoria

No. 2

Notice of Appeal Schedule "AA" to Case Stated

28th March 1974 (continued)

- 1. The said assessment was ultra vires and wrong in law.
- 2. The said assessment was excessive and ought properly to have been calculated and was not calculated in accordance with the provisions of an agreement (a copy of which is annexed hereto and marked "B") made between the Appellant and the Respondent and dated the 7th day of May 1964. At the hearing of the said appeal the Appellant will refer to and rely upon the full terms of the said agreement but says that the substance or effect of the relevant provisions of the same is that for the year to which the said assessment relates the said rate should be that proportion of \$28,811,291 which was the capital expenditure of the Appellant upon the lands the subject of the said assessment as at the 31st day of December, 1972 as 33 bears to 20,000 provided always that such rate should be not less than \$50,000.

10

20

DATED the 28th day of March, 1974.

Sgd. Aubrey G. Schrader
.....

Aubrey Galway Schrader a member of the firm of Whiting & Byrne, solicitors for the Appellant.

30 TO: The Registrar, County Court, Melbourne.

AND TO:
the abovenamed Respondent

The President Councillors and Ratepayers of the Shire of Hastings

Rating Agreement Shire of Hastings
and BP Refinery (Westernport)
Proprietary Limited - Schedule "A"
to Case Stated dated 7th May 1964

No. 3

Rating
Agreement
Shire of
Hastings and
BP Refinery
(Westernport)
Proprietary
Limited
Schedule "A"
to Case
Stated
7th May 1964

THIS AGREEMENT is made the Seventh day of May One thousand nine hundred and sixty-four Between:
THE PRESIDENT COUNCILLORS AND RATEPAYERS OF THE
SHIRE OF HASTINGS of the State of Victoria (hereinafter called "the Shire") of the one part and
BP. REFINERY (WESTERNPORT) PROPRIETARY LIMITED whose registered office is situated at 505 St. Kilda Road Melbourne in the said State (hereinafter called "the Company") of the other part:

10

W H E R E A S :

- (i) The Company is desirous of establishing an oil refinery on certain lands situated at Crib Point being the lands described in Certificates of Title Volume 7048 Folio 587, Volume 7290 Folio 836, Volume 7408 Folio 468, Volume 8047 Folio 497, Volume 8127 Folio 739, Volume 4075, Folio 904 and Volume 5389 Folio 641 (hereinafter called "the refinery site"). 20
- (ii) The Company has entered into an Agreement with the State of Victoria relating to the establishment of the said refinery and the construction of port facilities at Crib Point which Agreement as ratified by the Westernport (Oil Refinery) Act 1963 is hereinafter called "the Refinery Agreement". 30
- (iii) The Company occupies and intends to become the registered proprietor of the refinery site and is liable to be rated in respect thereof.
- (iv) The Shire is of the opinion that the establishment and maintenance of the said refinery within the municipal boundaries of the Shire makes a substantial contribution towards the industrial development of the municipality and encourages the decentralisation of industry in Victoria. 40

(v) The Shire is empowered by the Local Government (Decentralized Industries) Act 1963 to enter into an agreement with the Company as to the amount of rates that will be payable by the Company.

10 (vi) The Local Government (Decentralized Industries) Act 1963 provides that no such agreement shall have any force and effect until it has been approved by Order of the Governor-in-Council published in the Government Gazette.

(vii) The Shire and the Company have agreed upon the amount of the rates payable by the Company on the refinery site.

NOW THIS AGREEMENT WITNESSETH :

1. THE word "year" wherever it occurs in this Agreement shall be taken to mean (unless otherwise stated) any twelve months ending on the last day of September.

20 2. THE amount of rates that will be payable by the Company under the Local Government Act (which expression means and includes the Local Government Act 1958 and any amendment thereto and any Act for the time being providing for the imposition of rates by municipal authorities) in respect of the refinery site shall be as follows:-

30 (i) From the date hereof until the commissioning date as defined in the Refinery Agreement the rates payable by the Company shall be -

(a) For the year ending 30th September 1964, the sum of One thousand pounds (£1,000).

(b) For the year ending 30th September, 1965, the sum of Two thousand pounds (£2,000).

40 (c) For the year ending 30th September 1966, and any subsequent year prior to the commissioning date, the sum of Three thousand pounds (£3,000).

No. 3

Rating
Agreement
Shire of
Hastings and
BP Refinery
(Westernport)
Proprietary
Limited
Schedule "A"
to Case
Stated

7th May 1964
(continued)

No. 3
 Rating
 Agreement
 Shire of
 Hastings and
 BP Refinery
 (Westernport)
 Proprietary
 Limited
 Schedule "A"
 to Case
 Stated
 7th May 1964
 (continued)

PROVIDED that the amount of rates payable in the year in which the commissioning date occurs shall be for that part of the year before the commissioning date a corresponding part of £1,000, £2,000 or £3,000 whichever is the rate applicable to that year and for that part of the year after the commissioning date a corresponding part of the annual municipal rate which would have been payable for that year if it had been calculated for that year in accordance with paragraph (ii)(b) of this Clause 2 upon the capital expenditure on the Refinery site at the commissioning date. 10

(ii) For the period of ten (10) years commencing on the first day of the year next following the commissioning date the amount of the rates shall be calculated according to the total amount of the capital expenditure of the Company upon the refinery site from time to time so that - 20

(a) If such capital expenditure at the date to which the Balance Sheet and Statement of Accounts of the Company shall be made up shall be Twenty million pounds - - (£20,000,000) precisely, the annual municipal rate for the year following that date shall be Thirty-three thousand pounds (£33,000). 30

(b) If such capital expenditure shall be more or less than Twenty million pounds - - (£20,000,000) the annual municipal rate for the year following shall be the proportion of such capital expenditure which Thirty-three thousand pounds (£33,000) bears to Twenty million pounds (£20,000,000) PROVIDED that after the commissioning date the annual municipal rate shall not be less than Twenty-five thousand pounds (£25,000) unless otherwise agreed in writing between the Shire and the Company. 40

(iii) For the period of thirty (30) years commencing at the expiration of the ten years referred to in paragraph (ii) hereof

the amount of the annual municipal rate payable by the Company shall be calculated as follows:

(a) If no change is made after the expiration of the said first period of ten years in the general rate in the pound levied on the net annual value of rateable property within the Shire the rates shall continue to be calculated in accordance with sub-paragraph (ii) hereof.

(b) If such a change is made after the expiration of the said first period of ten years in the amount of such general rate in the pound the above ratio of Thirty-three thousand pounds (£33,000) to Twenty million pounds (£20,000,000) shall be varied to agree with the proportional change in the general rate and the annual municipal rate shall be calculated as aforesaid in accordance with the varied ratio PROVIDED that if any such change in the general rate in the pound follows a revaluation of all rateable properties within the Shire the annual municipal rate payable by the Company in the year preceding such change shall continue to be payable by the Company.

(c) If the Shire shall assess rates upon a basis other than the net annual value, the annual municipal rate that will be payable by the Company will be such sum as mutually agreed upon or determined from time to time in a manner mutually agreed upon.

3. WITHIN six months of the expiration of a period of ten years commencing at the expiration of the ten years referred to in paragraph (ii) of Clause 2 the Company shall confer with the Shire on all matters pertaining to this Agreement and its operation and effectiveness.

4. AT the expiration of the period of thirty (30) years referred to in paragraph (iii) of Clause 2 :

No. 3

Rating
Agreement
Shire of
Hastings and
BP Refinery
(Westernport,
Proprietary
Limited
Schedule "A"
to Case
Stated

7th May 1964
(continued)

(i) This Agreement shall cease to have effect.

(ii) The Council may enter into a new Agreement with the Company for the levying of rates PROVIDED that in making such new agreement the Shire for the time being shall give consideration to the exercise of its powers under the Local Government (Decentralized Industries) Act 1963 or any similar legislation in force at the time.

No. 3

Rating
Agreement
Shire of
Hastings and
BP Refinery
(Westernport)
Proprietary
Limited
Schedule "A"
to Case
Stated

7th May 1964
(continued)

10

5. FROM and after the said commissioning date the Company shall after the preparation of each annual Balance Sheet and Statement of Accounts and on or before the first Tuesday in December in each year give to the Shire a statement certified by the Company's auditors of the amount of the Company's capital expenditure upon the refinery site and such details thereof as the Shire may reasonably require the first of such statements to include the amount of such capital expenditure to that date and to specify the amount of such capital expenditure as at the commissioning date and subsequent statements to include the amount of such capital expenditure during the twelve (12) months preceding the date to which the accounts of the Company are made up.

20

6. THE rates payable by the Company pursuant to this Agreement shall be paid on or before the Tenth day of April in each year.

30

7. IN the event of:

(i) A disagreement between the parties hereto upon any matters stated herein to require agreement; or

(ii) A dispute between the parties as to the interpretation or effect of this Agreement or any part thereof or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith.

40

(iii) A dispute between the parties relating to the rates payable on the refinery site arising from circumstances not envisaged at the date hereof;

such disagreement or dispute shall be referred to the arbitration of Her Majesty's Minister for Local Government for the time being in the State of Victoria who shall act as arbitrator in accordance with the Arbitration Act 1958.

10 8. THE levying and payment of rates upon any other lands adjacent to the refinery site and acquired by the Company at any time for or in connection with the extension of its undertaking within the Shire shall be the subject of a separate agreement or separate agreements between the Company and the Shire. If such other land is acquired for residential development or office accommodation or commercial purposes other than those connected directly with the refinery rates on the basis of the Nett Annual Value shall be charged to the Company.

No. 3
Rating Agreement
Shire of Hastings and BP Refinery (Westernport) Proprietary Limited
Schedule "A" to Case Stated
7th May 1964
(continued)

20 9. THIS Agreement is subject to the approval of the Governor-in-Council.

20 IN WITNESS whereof these presents have been executed the day and year first hereinbefore written.

THE COMMON SEAL of the PRESIDENT
COUNCILLORS AND RATEPAYERS OF
THE SHIRE OF HASTINGS was
hereunto affixed in the
presence of:

(Sgd.) G.W. Gorrie President
(Sgd.) D.M. Thompson Councillor S E A L
30 Secretary

THE COMMON SEAL of BP REFINERY)
(WESTERNPORT) PROPRIETARY)
LIMITED was hereto affixed in)
the presence of:-)

(Sgd.) C.E. Clark Director S E A L
Secretary

A P P R O V E D
By the Governor-in-Council, 26 May 1964
(Sgd.)
40 Clerk of the Executive Council

Order in Council Schedule "B" to Case
Stated dated 26th May 1964

No.4

LOCAL GOVERNMENT DEPARTMENT

Order in
Council
Schedule "B"
to Case
Stated dated
26th May
1964

At the Executive Council Chamber, Melbourne, the
twenty-sixth day of May, 1964.

PRESENT:

His Excellency the Governor of Victoria.

Mr. Bloomfield : Mr. Porter
Mr. Fraser : Mr. Mack.

10

APPROVAL OF RATING AGREEMENT BETWEEN THE SHIRE OF
HASTINGS AND BP (WESTERNPORT) PTY. LIMITED.

WHEREAS:

(a) BP Refinery (Westernport) Proprietary Limited
is desirous of establishing an oil refinery on
the land described in certificates of title,
volume 7048, folio 587, volume 7290, folio 836,
volume 7408, folio 468, volume 8047, folio 497,
volume 8127, folio 739, volume 4075, folio 904,
volume 5389, folio 641 which land is not within
a radius of 26 miles of the General Post Office
at Melbourne;

20

(b) the Council of the Shire of Hastings is of the
opinion that the establishment and maintenance
of the said refinery within the municipality
will make a substantial contribution towards the
industrial development of the municipality and
will encourage the decentralization of industry
in Victoria, and

(c) the President, Councillors and Ratepayers of the
Council of the Shire of Hastings and BP
Refinery (Westernport) Proprietary Limited on
the 7th day of May 1964, entered into an agree-
ment in respect of the above described land as
to the amount of rates that will be payable
thereon by the said company under the Local
Government Act 1958 (as amended) and copies
of such agreement have been submitted to the
Minister for Local Government.

30

Now, therefore, His Excellency the Governor of
the State of Victoria by and with the advice of the
Executive Council thereof, and in pursuance of the
provisions of the said Part XIV.A of the Local
Government Act 1958, hereby approves the said
agreement.

40

And the Honourable Murray Victor Porter, Her
Majesty's Minister for Local Government for the
State of Victoria, shall give the necessary
directions herein accordingly.

J. COLQUHOUN, Clerk of the Executive Council.

No. 5(a)

Letter, BP Refinery (Westernport)
Proprietary Limited to The Secretary,
Shire of Hastings dated 15th December
1969 (part of Schedule "C" to Case
Stated)

15th December 1969

G.003 JPW/PM

Secretary,
Shire of Hastings,
10 HASTINGS 3915

Dear Sir,

For several months now, BP in Australia has been
considering its corporate structure with a view to
seeing how it could be streamlined and improved.
The conclusion which has yet to be approved by our
Head Office in London amounts, very briefly, to the
transfer of share-holdings in our two refinery
companies at Kwinwan and Westernport to BP Australia
Limited, who will also acquire most of BP's other
20 interests in Australia, and become the main operating
company responsible for the supply, shipping,
refining and marketing. The Holding Company in
Australia, The British Petroleum Company of
Australia Limited, will, however, continue to exist.

I am notifying you of this change, which is aimed
to be effective from the beginning of 1970, before
any public announcements are made because I know
the interest the Councillors and yourself have in
the activities of BP Westernport.

30 You may rest assured that the change which is envi-
saged will make no difference to our concern with
the development of our activities at Westernport,
and I hope I may assume that there will be no
difficulty over transferring to BP Australia Limited
those rights and privileges which by suitable agree-
ments have been vested in BP Refinery (Westernport)
Proprietary Limited.

Yours faithfully,
BP REFINERY (WESTERNPORT) PROPRIETARY LIMITED

40 (Sgd.) L.F. OGDEN

(L.F. Ogden)
General Manager.

No.5(a)

Letter,
BP Refinery
(Westernport)
Proprietary
Limited to
The Secretary,
Shire of
Hastings

15th December
1969
(part of
Schedule "C"
to Case
Stated)

16.

No. 5(b)

Letter, Shire of Hastings to
BP Refinery (Westernport) Pty.Ltd.
dated 23rd December 1969 (part
of Schedule "C" to Case Stated)

No.5(b)

SHIRE OF HASTINGS

Letter, Shire
of Hastings
to BP Refinery
(Westernport)
Pty. Ltd.
dated 23rd
December 1969
(part of
Schedule "C"
to Case
Stated)

Telephone HASTINGS 9 1207

All correspondence
to be addressed to
the Shire Secretary

MARINE PARADE, HASTINGS

P.O. BOX 55,
HASTINGS, 3915

Your Ref: c.c.
Secretary 10
BPA

Our Ref: LAW/AS
5407

23rd December, 1969

Mr. L.F. Ogden,
General Manager,
B.P. Refinery (Westernport) Pty. Ltd.,
CRIB POINT. 3919.

Dear Sir,

20

Re Rating Agreement

I desire to acknowledge receipt of your
letter of 15th December, ref. G.003 JPW/RM and
in reply have to advise that the effect of the
transfer of the shareholdings in B.P. Refinery
(Westernport) Proprietary Limited to B.P.
Australia Limited on the agreement between this
Council and your Company will be considered at
an early meeting and you will be advised in due
course of Council's determination in the matter.

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Yours faithfully,

(Sgd.) L. A. WALKER

L. A. Walker
SHIRE SECRETARY.

17.

No. 5(c)

Letter, Shire of Hastings to BP Refinery
(Westernport) Pty. Ltd. dated 9th February
1970 (Part of Schedule "C" to Case Stated)

SHIRE OF HASTINGS

Telephone: Hastings 9 1207

All Correspondence
to be addressed to
The Shire Secretary

MARINE PARADE, HASTINGS

P.O. BOX 55,
HASTINGS, 3915

Your Ref:

Our Ref: LW/VC
5407

9th February, 1970

The General Manager,
BP. REFINERY (WESTERNPORT) PTY. LTD.,
CRIB POINT. Vic. 3919.

Dear Sir,

With further reference to your letter of the
15th December, I have to advise that my Council
has now considered the opinion handed down by its
Solicitors in relation to the effect of the Company
change, on the agreement between BP. Refinery
(Westernport) Pty. Ltd., and this Council.

The Solicitors have advised that the agreement
will have no effect once the change has taken place,
and as a result Council has resolved to allow the
agreement to lapse.

Yours faithfully,

(Sgd.) L. A. Walker

L. A. Walker

Shire Secretary.

No.5(c)

Letter, Shire
of Hastings
to BP
Refinery
(Westernport)
Pty. Ltd.
9th February
1970 (part
of Schedule
"C" to Case
Stated

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18.

No. 5(d)

Letter, BP Australia Limited to
Shire of Hastings dated 26th February
1970 (Part of Schedule "C" of Case
Stated)

No.5(d)

26th February, 1970

LFO/BMH

Letter, BP
Australia
Limited to
Shire of
Hastings
26th February
1970
(Part of
Schedule "C"
to Case
Stated)

The Shire Secretary,
Shire of Hastings,
P.O. Box 55,
HASTINGS, Vic. 3915

Dear Sir,

I note the advice in your letter of 9th February
and I would appreciate an opportunity to discuss
with you and with your Council a fresh agreement
to record the rates levied in respect of the
Westernport Refinery site.

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These rates will become payable by BP Australia
Limited which, as in the case of the refinery
company, is a wholly-owned subsidiary of the
holding company for our group in Australia, The
British Petroleum Company of Australia Limited.
As mentioned in my letter of 15th December, the
circumstances of our presence and activities at
Westernport are in no way affected by the alteration
of our corporate structure. Considerable capital
works are now in progress at the refinery site and
extensions of the refinery plant will be
constructed in the near future.

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I trust that you can arrange an early opportunity
for discussion of these matters.

Yours faithfully,
BP AUSTRALIA LIMITED

30

(Sgd.) L.F.OGDEN

(L.F.Ogden)
General Manager,
Westernport Refinery.

No. 5(e)

Letter, Shire of Hastings to BP Refinery
(Westernport) Pty. Ltd. dated 14th April
1970 (Part of Schedule "C" to Case Stated)

No.5(e)

Letter, Shire
of Hastings
to BP
Refinery
(Westernport)
Pty. Ltd.
14th April
1970
(part of
Schedule "C"
to Case
Stated)

SHIRE OF HASTINGS

Telephone: Hastings
9 1207

MARINE PARADE, HASTINGS

P.O. BOX 55,
HASTINGS, 3915

All correspondence
to be addressed to
The Shire Secretary

Your Ref. LFO:BMH

Our Ref: LW/VC
5407

14th April, 1970

The General Manager,
BP. WESTERNPORT REFINERY,
CRIB POINT. Vic. 3919.

Dear Sir,

In reply to your letter of the 26th February,
I desire to advise that the matters raised by you
were placed before Council at a Meeting on the
17th March, and I have been instructed to advise
that Council may give further consideration to
your request at a later date.

You will be advised in due course of any
further action taken by Council.

Yours faithfully,

(Sgd.) L. A. WALKER

L. A. Walker

Shire Secretary.

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In the
Supreme Court
of Victoria

No. 6

Order of the
Supreme Court
of Victoria
Crockett J.

25th
September
1973
(Schedule "D"
to Case
Stated)

No. 6

Order of the Supreme Court of Victoria
Crockett J. dated 25th September 1973
(Schedule "D" to Case Stated)

IN THE SUPREME COURT
OF VICTORIA

) 1972

No. Co. 8464

IN THE MATTER of the Companies Act
1961

and

IN THE MATTER of BP REFINERY
(WESTERNPORT) PROPRIETARY LIMITED
(In liquidation)

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and

THE SHIRE OF HASTINGS Intervenor

BEFORE HIS HONOUR MR. JUSTICE CROCKETT
(IN CHAMBERS)
TUESDAY THE 25TH DAY OF SEPTEMBER, 1973

THIS MATTER coming on to be heard this day
before me pursuant to the Order of His Honour Mr.
Justice Kaye made in Chambers the 6th day of October, 20
1972 UPON HEARING Mr. Young one of Her Majesty's
Counsel and Mr. Jordan of Counsel for VICTOR GEORGE
HENRY HARRISON the Liquidator of the abovenamed
BP REFINERY (WESTERNPORT) PROPRIETARY LIMITED (in
liquidation) and for BP AUSTRALIA LIMITED and
THE BRITISH PETROLEUM COMPANY LIMITED the contribu-
tories of the said Company AND UPON HEARING
Mr. Opas of Her Majesty's Counsel and Mr. Walls of
Counsel for the President, Councillors and Rate-
payers of The Shire of Hastings AND UPON READING 30
the Summons dated 20th day of September, 1972
issued on behalf of the said Victor George Henry
Harrison being an application for an order that
the winding up of the said Company be perpetually
stayed and the other relief therein referred to
AND UPON READING the several affidavits filed herein
IT IS ORDERED that the winding-up of the said
BP Refinery (Westernport) Proprietary Limited be and
is hereby perpetually stayed AND IT IS FURTHER
ORDERED that an extraordinary general meeting of 40
the contributories of the said Company be held for
the purpose of electing directors AND I CERTIFY
that this was a matter proper for the attendance
of Counsel.

(Sgd.)

Lease, BP Australia Limited to BP Refinery
(Westernport) Proprietary Limited dated
28th September 1973 (Schedule "E" to Case
Stated)

THIS LEASE made the 28th day of September,
1973 B E T W E E N BP AUSTRALIA LIMITED whose
registered office is situated at 1-29 Albert Road
Melbourne (hereinafter called "the Lessor") of the
one part and BP REFINERY (WESTERNPORT) PROPRIETARY
LIMITED whose registered office is situate at Crib
Point Victoria (hereinafter called "the Lessee")
of the other part W I T N E S S E T H as follows:

1. IN CONSIDERATION of the agreement of the
Lessee contained in Clause 2 hereof and of the
other agreements covenants and conditions herein-
after contained the Lessor hereby demises to the
Lessee ALL THAT piece of land being the land
coloured red on the plan attached hereto and being
the whole of the land more particularly described
and remaining untransferred in Certificate of Title
Volume 8519 Folio 769 (hereinafter called "the
demised premises") with all buildings thereon
TO HOLD the same unto the Lessee from the 28th day
of September, 1973 for the term of three years.

2. THE Lessee covenants and agrees with the
Lessor to carry out promptly for the Lessor or as
it may direct such refining processes of crude oil
and other feedstocks the property of the Lessor and
others as the Lessor may from time to time reason-
ably require according to the capacity of the
refinery plant the property of the Lessee
situated on the demised premises and not to carry
out any other refining processes.

3. THE Lessee hereby further covenants and agrees
with the Lessor as follows:-

(a) To keep the demised premises and at the end
of the term to deliver them up to the Lessor
in good repair fair wear and tear and damage
by accidental fire Act of God and war damage
only excepted.

(b) To comply in all respects with the require-
ments of all Acts of Parliament and regulations
and by-laws thereunder and all orders and
requirements of any local or other authority
relating to the demised premises and the

Lease, BP
Australia
Limited to
BP Refinery
(Westernport)
Proprietary
Ltd.
28th
September
1973
(Schedule "E"
to Case
Stated)

conduct by the Lessee of the said refining processes.

No. 7
 Lease, BP
 Australia
 Limited to
 BP Refinery
 (Westernport)
 Proprietary
 Ltd.
 28th
 September
 1973
 (Schedule "E"
 to Case
 Stated)
 (continued)

- (c) Not to sublet or assign over or in any way dispose of or part with the possession of the demised premises or any part thereof without the consent of the Lessor first had and obtained and Section 144 of the Property Law Act 1958 is hereby negatived and does not apply to this Lease.
- (d) Not to make nor suffer to be made any alteration to the demised premises without the consent in writing of the Lessor first obtained. 10
- (e) To pay all stamp duty payable upon or in respect of this Lease in accordance with the law of the State of Victoria together with the costs of preparation of this Lease.
- (f) To paint the buildings on the demised premises at such times and in such colours as the Lessor from time to time reasonably specifies. 20
- (g) At all times to take all reasonable precautions against the outbreak of fire on the demised premises and to observe and comply with all laws for the time being in force relating to the prevention outbreak spread and control of fire on the demised premises.
- (h) To pay all municipal and other rates (including excess water rates) and other like outgoings of a recurring nature including gas and electricity charges made levied or incurred in respect of the demised premises. 30

4. THE Lessor covenants with the Lessee that the Lessee performing and observing the covenants provisions conditions and agreements herein contained on its part to be performed and observed may peaceably hold and enjoy the said premises without hindrance or interruption by the Lessor or by any other person or persons lawfully claiming under the Lessor. 40

5. IT is mutually covenanted and agreed as follows:

(i) If the Lessee shall commit permit or suffer to occur any breach or default in the due and punctual observance and performance of any of the covenants obligations and provisions of this Lease or if the Lessee shall go into liquidation (save for the purpose of amalgamation or reconstruction) or shall have a receiver or official manager appointed or shall call a meeting of its creditors then and in any one or more of such events the Lessor may re-enter into and upon the demised premises or any part thereof in the name of the whole and repossess the same and thereupon this Lease shall determine without prejudice to any action or remedy which the Lessor has or might or otherwise could have for breach of covenant or damages and thereupon further the Lessor shall be freed and discharged from any action suit claim and demand by or obligation to the Lessee under or by virtue of this Lease.

No. 7
 Lease, BP
 Australia
 Limited to
 BP Refinery
 (Westernport)
 Proprietary
 Ltd.
 28th
 September
 1973
 (Schedule "E"
 to Case
 Stated)
 (continued)

(ii) Fourteen days is the period specified for the purposes of Section 146 of the Property Law Act 1958.

(iii) If at any time the demised premises or the Lessee's fixtures thereon shall be destroyed or damaged from any cause whatsoever (otherwise than as a result of the negligence or default of the Lessee or of any breach by the Lessee of the covenants herein contained, so as to render the demised premises unfit for use for the purpose of the conduct of a refinery and the same shall not have been repaired within ninety days from the date of such destruction or damage then either the Lessor or the Lessee may at any time within thirty days from the expiration of the aforesaid period of ninety days give to the other notice in writing to determine this demise which thereupon shall be determined as from the date of such destruction or damage without any right for either party to claim damages by reason of such determination but without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach of covenant.

(iv) In the event of the Lessee continuing in

No. 7
 Lease, BP
 Australia
 Limited to
 BP Refinery
 (Westernport)
 Proprietary
 Ltd.
 28th
 September
 1973
 (Schedule "E"
 to Case
 Stated)
 (continued)

- occupation of the demised premises after the expiration of the term hereby created without any demand in writing for possession thereof having been made by the Lessor the demised premises shall be held by the Lessee under a tenancy determinable at any time by one calendar month's previous notice in writing given by either party to the other and upon the same terms and conditions as are herein contained so far as the same can be applied to a monthly tenancy. 10
- (v) It is agreed that the Lease hereby created is given subject to:
- (a) the rights and obligations of the Lessor (if any) under Agreements dated 26th September, 1968 and 17th June, 1969 made between the Lessor's predecessor in title and Henry Thomas Crow and Edward Raymond Crow respectively. The Lessee agrees to assume the said rights and obligations of the Lessor. 20
- (b) the rights and obligations of the Lessor under Clause 4 of an Agreement made the 5th May, 1966 between the Lessor's predecessor in title and the State Electricity Commission permitting the Commission to occupy and use part of the land hereby demised for sub-station purposes.
- (c) the rights and obligations of the Lessor under a Licence for Electricity Transmission granted by the Lessor to the State Electricity Commission on 22nd September, 1970. 30
- (vi) Within six months following the expiration or sooner determination of the term hereby created the Lessee may remove its refinery plant and equipment situated on the demised premises.
- (vii) If and whenever there shall occur any breach of any covenant condition proviso or agreement on the part of the Lessee herein contained it shall be lawful for (but not obligatory upon) the Lessor (without prejudice to any of the powers herein contained or 40

to any other remedy) with or without its servants or agents or workmen to enter onto the demised premises at all reasonable times and to do all such acts and things as the Lessor may consider proper or desirable to remedy or attempt to remedy any such breach or any part thereof and all monies paid or expended by the Lessor in remedying or attempting to remedy such breach or part thereof shall be forthwith paid by the Lessee to the Lessor and if not so paid shall be recoverable by the Lessor by way of damages.

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(viii) The Lessee hereby releases and indemnifies the Lessor its officers servants and agents and will keep them indemnified from and against all actions and claims which may be made brought commenced or prosecuted against them or any of them in respect of any damage done to or sustained by the Lessee or any other person (whether in respect of persons or property) that may arise out of the use of the demised premises or any part thereof or by reason of the observance or non-observance (as the case may be) by the Lessee of any of its covenants in this Lease contained and from and against all costs charges and expenses which they or any of them may pay sustain or incur in defending or settling any such actions or claims.

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30 6. IN this Lease :

- (a) "Lessor" includes the successors and assigns of the Lessor and the person for the time being entitled to the reversion of the demised premises;
- (b) "Lessee" includes the Lessee its successors and permitted assigns.

IN WITNESS whereof the parties hereto have hereunto set their seals the day and year first hereinbefore written.

40 THE COMMON SEAL of BP AUSTRALIA)
LIMITED was hereunto affixed in)
the presence of:-)

Director:
Secretary:

No. 7
Lease, BP
Australia
Limited to
BP Refinery
(Westernport)
Proprietary
Ltd.
28th
September
1973
(Schedule "E"
to Case
Stated)
(continued)

THE COMMON SEAL of BP REFINERY)
(WESTERNPORT) PROPRIETARY LIMITED)
was hereunto affixed in the
presence of :

No. 7

Lease, BP
Australia
Limited to
BP Refinery
(Westernport)
Proprietary
Ltd.
28th
September
1973
(Schedule "E"
to Case
Stated)
(continued)

Director :

Secretary:

27.

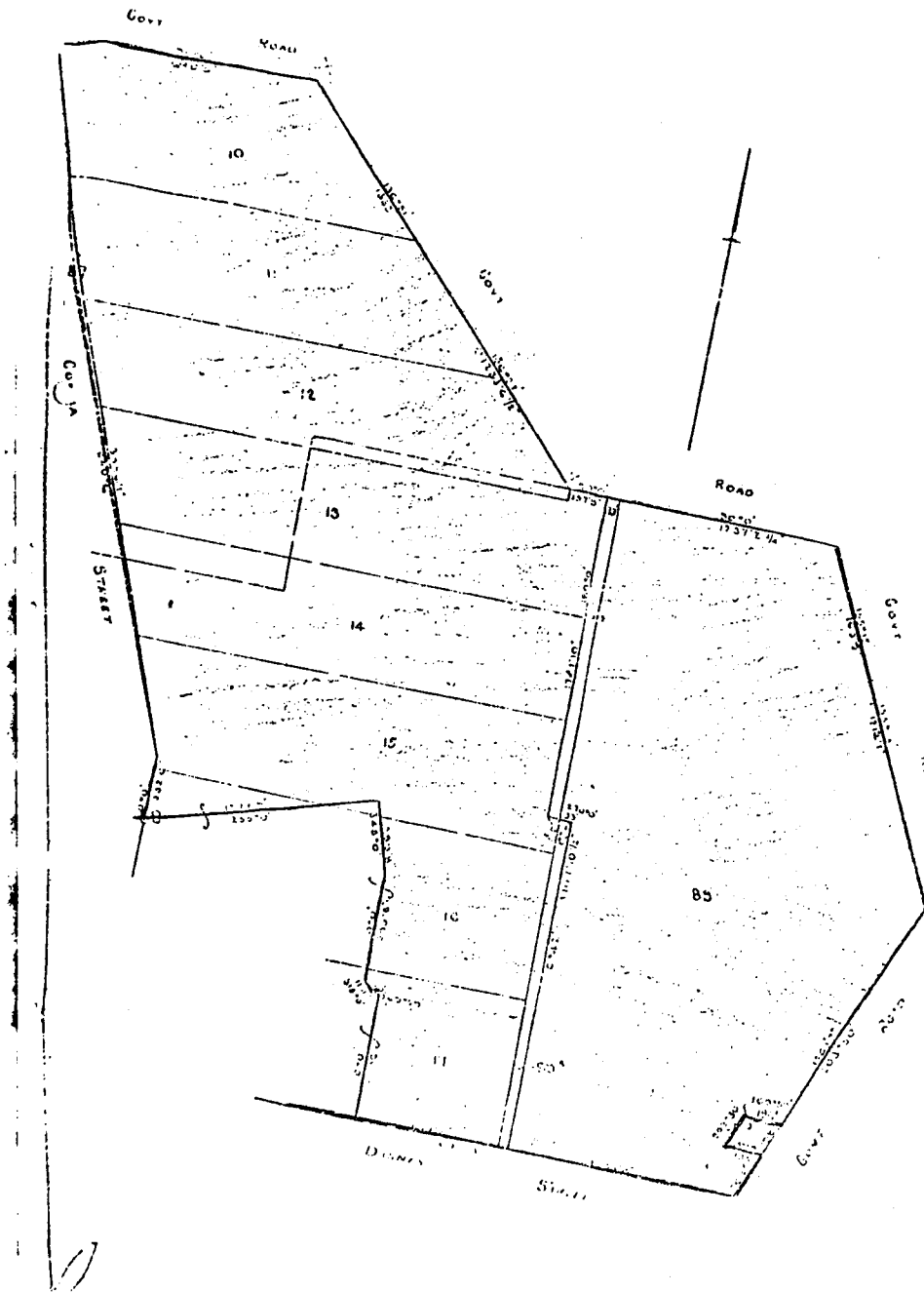
No. 7

No.7

ANNEXED SHEET REFERRED TO
CERTIFICATE OF TITLE VOL. 311

ASSISTANT REGISTRAR

Lease BP
Australia
Limited to
BP Refinery
(Westernport)
Proprietary
Limited
28th September
1973 (Schedule
"E" to Case
Stated)
(continued)



28.

No. 8

The Shire Secretary,
Shire of Hastings,
Marine Parade,
HASTINGS 3915
Victoria

No. 8

Notice of
Occupation
by BP
Refinery
(Westernport)
Proprietary
Limited to
Shire of
Hastings
28th
September
1973
Schedule "F"
to Case
Stated)

NOTICE OF OCCUPATION OF PREMISES PURSUANT
TO SECTION 880 OF THE LOCAL GOVERNMENT
ACT 1958

BP REFINERY (WESTERNPORT) PROPRIETARY LIMITED

whose registered office is and was prior to its
becoming occupier of the premises hereinafter
referred to situate at Crib Point in the State of
Victoria HEREBY GIVES NOTICE that on 28th day of
September, 1973 it became the occupier of premises
being the site of the BP refinery at Crib Point
and being the whole of the land remaining untrans-
ferred and more particularly described in
Certificate of Title Volume 8519 Folio 769.

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DATED this 28th day of September, 1973.

SIGNED for and on behalf of)
BP REFINERY (WESTERNPORT))
PROPRIETARY LIMITED)

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.....(Director)

.....(Secretary)

Rating Assessment Notice Shire of Hastings to BP Refinery (Westernport) Proprietary Limited dated 29th January 1974 (Schedule "G" to Case Stated)

Rating Assessment Notice Shire of Hastings to BP Refinery (Westernport) Proprietary Limited dated 29th January 1974 (Schedule "G" to Case Stated)

SHIRE OF HASTINGS BITTERN RIDING

ASSESSMENT No. 1234 PROPERTY DESCRIPTION PTS. 87, 88, 89 THE ESPLANADE CRIB POINT DATE OF POSTING 29 JAN 1974

PROPERTY No. 2278220

GENERAL	U.C.V.	EGG	CIV.	SEWERAGE	NAV.	TOTAL DUE
154966.00						154966.00

CURRENT AMOUNTS

OFFICE COPY ONLY - WHEN RECEIVED

B.P. REFINERY (W/PORT)
220 THE ESPLANADE
CRIB POINT 3919

1973-1974

DETAILS OF PAYMENT

ASSESSMENT No. 1234 PROPERTY DESCRIPTION PTS. 87, 88, 89 THE ESPLANADE CRIB POINT

PROPERTY No. 2278220

GENERAL	U.C.V.	EGG	CIV.	SEWERAGE	NAV.	TOTAL DUE
154966.00						154966.00

CURRENT AMOUNTS

SHIRE OF HASTINGS BITTERN RIDING VALUATION & RATE NOTICE

B.P. REFINERY (W/PORT)
220 THE ESPLANADE
CRIB POINT 3919

1973-1974

DETAILS OF PAYMENT

DEMAND—The amounts as shown above are now due and payable and payment is hereby demanded. If the amounts due are not paid within 14 days after the service of this notice legal proceedings may be taken for the recovery of such amounts (L.G.A. Sec. 241)

PLEASE READ CAREFULLY THE INFORMATION PRINTED ON THE REVERSE OF THIS NOTICE

N. J. WILLIAMS, Rate Collector

Rating
Assessment
Notice
Shire of
Hastings
to BP
Refinery
(Western-
port)
Proprietary
Limited
dated 29th
January
1974
(Schedule
"G" to
Case
Stated)
(continued)

NOTICE OF VALUATION

Notice is hereby given that the property described in the attached notice named or occupied by you has been valued as shown thereon. Any person aggrieved therein may lodge an objection with the Council in the manner set out in Division 4 of Part III of the Valuation of Land Act—

- A) within two months after this notice was given } For the first use of a general or supplementary valuation or where the notice was not given until 1/ after Feb. 1st.
- B) during the months of February and March next. } Other than as above.

Notice is also given that on 30th September 1973 has been fixed, pursuant to the provisions of Section 7 (2) of the Valuation of Land Act, as the date at which the value of all rateable property in the Shire shall be assessed, having regard to all things and conditions present affecting the value of the land at the time of the valuation.

Any such objections must be in or in the effect of the prescribed form, copies of which are available at the office of the Council during the normal hours of business.

K. O. ADAMS, VALUER.

PAYMENT — May be made at the Revenue Office from 9.30 a.m. to 4 p.m. daily, Saturdays and holidays excepted. If payment is by cheque this receipt is not valid until cheque is cleared by the bank. Cheques should be made payable to the Shire of Hastings and addressed to P.O. Box 55, Hastings, 3915.

If agreed by any matter included in or omitted from any rate other than in respect of the assessment of the value of the rateable property any person may, within two months after notice of the amount of rate payable by him is given, give notice in writing to the Council of his intention to appeal to the County Court in the manner set out in Section 225 of the Local Government Act, as amended by Section 7 of the Valuation of Land (Amendment) Act 1955.

M. J. WILLIAMS, Rate Collector.

PAYMENT BY INSTALMENT — Section 386A Local Government Act.

- (1) A person liable in any year for the payment of any general or extra rate made for a period of one year (made on or before the 31st day of December in that year (or where the demand for payment of the rate is posted on or after the 16th day of December, with a fourteen days of posting) give notice in writing to the Council that he elects to pay any such rate by four equal instalments.
- (2) Notwithstanding the provisions of sub-section (2) of section 224 or of section 225 a person who has so elected shall not during that year be liable for the payment of interest on any general or extra rate if such rate is paid in four (which shall be as equal as is practicable) instalments on or before the last day of December, February, May and August respectively.
Provided that where the demand for payment of the rate is posted on or after the 16th day of December in that year there shall be sufficient compliance with the requirements of this section if the instalment is paid on or before the 31st day of December is paid within fourteen days of the date of the posting of the demand.
- (3) A person who having so elected fails to pay any instalment on or before the due date shall, notwithstanding the provisions of sub-section (2) of section 386 be liable to pay interest on that instalment calculated from the day on which, pursuant to section 341, interest on the rate became payable to the day on which the instalment is paid.

RATES AND CHARGES

- 1. The General Rate for the period 1/11/73 to 31/12/74 is 8 cents in the \$ on the Net Annual Valuation.
- 2. The Farm Rate for the period 1/11/73 to 31/12/74 is 7 cents in the \$ on the Net Annual Valuation.
- 3. The Sewerage Charge for the period 1/11/73 to 31/12/74 is 10 cents in the \$ on the Net Annual Valuation for all properties connected with the sewerage system.
- 4. The Garbage Charge for the period 1/11/73 to 31/12/74 is 10 cents in the \$ on the Net Annual Valuation for all properties connected with the sewerage system.
- 5. A Minimum Rate of 20 cents in the \$ per annum shall be payable by all ratepayers on the 1st day of January 1975.
- 6. The Council has the pleasure to announce that it has decided to reduce the rate for industrial and trade premises, with effect from 1/11/73, and if such are not paid on or before the 15th day of December 1974, such rate shall be reduced to 10 cents in the \$ on the Net Annual Valuation.

No. 10

Circular letter, Shire of Hastings to
Ratepayers dated 29th January, 1974

S H I R E O F H A S T I N G S

To -

Ratepayer as addressed.

Dear Sir/Madam,

10 The Council in striking the rates, was faced with
the problem of providing additional funds to meet
the charge of \$72,050 levied by the Westernport
Regional Planning Authority for the current
financial year.

This charge of the Authority's is \$9,428 more than
in the previous year, and the Council has there-
fore increased the General Rate by one per cent in
the dollar, and the Farm Rate by one cent in
the dollar, to meet this additional cost.

20 Any revenue obtained from rates which is in excess
of the amount required to meet the Authority's
charge, will be allocated for the provision of
additional Sport and Recreational facilities
throughout the Shire.

L. A. WALKER.

Shire Secretary.

29th January, 1974.

No.10

Circular
letter,
Shire of
Hastings to
Ratepayers
29th January
1974

In the Full
Court of the
Supreme Court
of Victoria

No.11

Judgment of
the Full
Court of
Victoria
5th May 1976

No. 11

Judgment of the Full Court of
Victoria dated 5th May 1976

THE FULL COURT OF VICTORIA

MELBOURNE

BEFORE THEIR HONOURS MR. JUSTICE GOWANS,
MR. JUSTICE MENHENNITT and MR. JUSTICE NEWTON

IN THE MATTER of Section 304 of the Local
Government Act 1958

- and -

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IN THE MATTER of an Appeal thereunder by
BP REFINERY (WESTERNPORT)
PROPRIETARY LIMITED

B E T W E E N:

BP REFINERY (WESTERNPORT)
PROPRIETARY LIMITED

Appellant

- and -

THE PRESIDENT COUNCILLORS AND
RATEPAYERS OF THE SHIRE OF HASTINGS

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J U D G M E N T

(Delivered 5th May, 1976)

GOWANS, J.: This is a special case stated by the
County Court on the hearing of an appeal against
a rate under S.304 of the Local Government Act
1958. The case requires the determination of the
matter by this Court. The rate appealed from was
one made against the appellant, BP Refinery
(Westernport) Proprietary Limited by the respondent,
the Shire of Hastings, in respect of land within
the municipality occupied by the appellant for the
purpose of an oil refinery.

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In 1963 the Local Government (Decentralized
Industries) Act 1963, No. 7014, assented to on
May 28th, 1963, authorised the making of agree-
ments as to rates by municipalities in certain

circumstances. It inserted into the Local Government Act 1958 S.390A(1) which provided as follows:

"The Council of any municipality may enter into an agreement with any person liable to be rated in respect of any land within the municipality which is not within a radius of 25 miles of the General Post Office at Melbourne and which is used or to be used for industrial purposes as to the amount of rates that will be payable by him under this Act and the amount of rate so agreed to be paid shall notwithstanding anything in this Act be for all purposes the rates that may be made and levied under this Act in respect of that land."

On May 15 1963 the appellant entered into an agreement with the Government of Victoria relating to the establishment of an oil refinery and the establishment of port facilities at Crib Point in Victoria and the agreement was thereafter ratified by the Westernport (Oil Refinery) Act 1963 No.7018. That agreement provided, inter alia, the following:

"3. Subject to the performance by the State from time to time of the obligations imposed on it by this agreement the company shall -

(a) "After the commencing date and without undue delay commence and complete the construction of the refinery and thereafter maintain operate and use the refinery and all additions and alterations thereto."

"6. ...

(b) Without affecting the liability of the parties to each other under this agreement either party shall have the right from time to time to entrust to other persons the performance of such portion or portions of its obligations and operations authorised under this agreement as it may consider expedient.

(c) The Company shall have the right to assign or otherwise dispose of this agreement or any interest therein to a company in which the British Petroleum Company of Australia Limited, a company

In the Full Court of the Supreme Court of Victoria

—
No.11

Judgment of the Full Court of Victoria

5th May 1976
(continued)

In the Full Court of the Supreme Court of Victoria

No.11

Judgment of the Full Court of Victoria

5th May 1976 (continued)

incorporated in the Australian Capital territory, and whose registered office in the State is situated 131 Queen Street, Melbourne, holds 30 per centum or more of the issued share capital.

(g) If the Company -

(1) enters into liquidation (other than a voluntary liquidation for the purpose of reconstruction) or -

(2) delays the commencement of the construction of the refinery beyond the period of one year from the commencing date for any cause other than those specified in paragraph (d) of this clause, or -

10

(3) abandons or repudiates this agreement -

the State may by notice in writing determine this agreement but such determination shall not affect the enforcement of any right obligation or liability theretofore acquired accrued or incurred."

20

On May 7 1964 the appellant, being then the occupier of the refinery site at Crib Point which was within the municipal district of the respondent Shire, and liable to be rated in respect of it, entered into an agreement with the respondent Shire pursuant to the power conferred by Act 7014 as to the amount of rates payable by the appellant under the Local Government Act on the refinery site. The agreement was approved by the Governor-in-Council on May 26, 1964. The continued subsistence of that agreement is a critical issue in this case. Thereafter, until December 31, 1969, the appellant remained the occupier of the refinery site and liable to be rated in respect of it and the rates were calculated in accordance with the rating agreement.

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On December 15 1969 the appellant wrote to the respondent Shire a letter as follows:

"For several months now BP in Australia has been considering its corporate structure with a view to seeing how it could be streamlined and improved. The conclusion

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which is yet to be approved by our Head Office in London amounts, very briefly, to the transfer of shareholders in our two refinery companies at Kwinana and Westernport to BP Australia Limited, who will also acquire most of BP's other interests in Australia, and become the sole operating company responsible for the supply, shipping, refining and marketing. The Holding Company in Australia, The British Petroleum Company of Australia Limited, will, however, continue to exist.

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I am notifying you of this change, which is aimed to be effective from the beginning of 1970, before any public announcements are made because I know the interest the Councillors and yourself have in the activities of BP Westernport.

You may rest assured that the change which is envisaged will make no difference to our concern with the development of our activities at Westernport, and I hope I may assume that there will be no difficulty over transferring to BP Australia Limited those rights and privileges which by suitable agreements have been vested in BP Refinery (Westernport) Proprietary Limited.

Yours faithfully,
BP REFINERY (WESTERNPORT) PROPRIETARY LIMITED
(L.F.Ogden)
General Manager."

It is common ground that the statement that BP Australia Limited would acquire these interests and become the sole operating company responsible for the refinery constituted an intimation to the effect that the appellant would cease to occupy the refinery site and cease to be rateable in respect of it. There is also an indication less clear in its terms and its import that the appellant might cease to exist and that BP Australia would wish to have a similar agreement in place of that with the appellant.

The appellant on December 31st 1969 went into liquidation in the form of a members voluntary winding up by a special resolution passed on that date, and a liquidator was appointed. On the following day, January 1st, 1970, the appellant

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yielded up occupation of the refinery site to BP Australia Limited which then went into occupation and became liable to be rated in respect of the site. There followed a distribution of the assets of the appellant in specie and in the course of the distribution a transfer was executed by the liquidator on January 21st, 1970, to BP Australia Limited of lands including the refinery site, and there were also transferred to that company the buildings and plant on the site, together with all the appellant's other assets except a relatively small sum of money.

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On February 3rd the Council of the respondent Shire passed a resolution "that the agreement be allowed to lapse", On February 9th, 1970, the respondent then wrote to the appellant as follows:

"With further reference to your letter of the 18th December, I have to advise that my Council has now considered the opinion handed down by its Solicitors in relation to the effect of the Company change, on the agreement between BP Refinery (Westernport) Pty. Ltd., and this Council.

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The Solicitors have advised that the agreement will have no effect once the change has taken place, and as a result Council has resolved to allow the agreement to lapse."

By a letter of February 26th over a signature "BP AUSTRALIA LIMITED, (L.F.Ogden), General Manager, Westernport Refinery," BP Australia Limited wrote to the respondent Shire as follows:

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"I note the advice in your letter of 9th February and I would appreciate an opportunity to discuss with you and with your Council a fresh agreement to record the rates levied in respect of the Westernport Refinery site.

These rates will become payable by BP Australia Limited which, as in the case of the refinery company, is a wholly-owned subsidiary of the holding company for our group in Australia, The British Petroleum Company of Australia Limited. As mentioned in my letter of 15th December, the circumstances of our presence and activities at Westernport are in no way affected by the alteration of our

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corporate structure. Considerable capital works are now in progress at the refinery site and extensions of the refinery plant will be constructed in the near future.

I trust that you can arrange an early opportunity for discussion of these matters."

10 On March 17, 1970, the transfer of the lands, including that of the refinery, from the appellant to BP Australia Limited, was registered in the office of Titles. The respondent thereafter assessed BP Australia Limited for rates in respect of the refinery site on the ordinary basis without reference to the concessions conferred by the agreement. That company then appealed to the County Court in respect of the assessment on the ground that by the terms of S.390A of the Local Government Act the company was entitled to be assessed at the rate specified in the agreement. The appeal was dismissed and the dismissal was confirmed by this Court (BP Australia Limited v. Shire of Hastings, 1973 V.R. 194.).

20 After January 1st, 1970, and between that date and 27th September 1973 the appellant ceased to give to the respondent statements of the appellant's capital expenditure upon the refinery site, pursuant to Clause 5 of the rating agreement.

30 On September 25, 1973, an order was made by Crockett, J. on the application of the liquidator and BP Australia Limited and The British Petroleum Company Limited (the contributories of the appellant) that the winding up of the appellant be perpetually stayed and that an extraordinary general meeting of the contributories be held for the purpose of electing directors.

40 On September 28, 1973, the refinery site and its buildings and plant were demised by BP Australia Limited to the appellant for three years and the appellant resumed occupation of the site and gave notice of it to the respondent Shire.

By an assessment notice dated January 29, 1974, the respondent Shire assessed the appellant on the ordinary basis. The appellant appealed, contending in its notice, that the assessment ought properly to have been calculated in accordance with the provisions of the agreement, saying that -

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"the substance or effect of the relevant provisions of the same is that for the year to which the said assessment relates the said rate should be that proportion of \$28,811,291 which was the capital expenditure of the appellant upon the lands the subject of the said assessment as at the 31st day of December 1972, as 33 bears to 20,000, provided always that such rates should be not less than \$50,000."

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The County Court dismissed the appeal, the learned Judge in the course of his reasons saying this:

"In the end I have come to the conclusion that not only is this a personal contract, as the Supreme Court has already decided, but that there was a fundamental condition of continuing occupancy by the appellant. A reading of the whole of the agreement leads, in my opinion, to the finding that it contemplates that the appellant will continuously occupy the site and therefore be liable for rates. I am further of the view that the actions of the parties and the correspondence amounted to an agreement that the agreement was at an end or, if it did not, the appellant was in fundamental breach and the respondent rescinded the contract by its letter of the 9th February 1970, inelegantly expressed though it may have been."

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The function of this Court is to determine the matter of the appeal upon the facts as stated.

The essential basis of the appeal is that the rates which may be levied under the Local Government Act in respect of the land could not exceed the amount of the rates agreed to be paid under the rating agreement. This is, in effect, what is provided for by the latter part of S.390A(1). One modification of that provision has been laid down by this Court in 1973 in the case mentioned above of BP Australia Limited v. Shire of Hastings. Its effect was that the rates referred to as being made and levied related to those levied on a person party to the agreement and on no other person. In our opinion the words "agreed to be paid" in the sub-section should be accorded an ambulatory operation so that they should be understood to

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mean "payable by him under the agreement from time to time". That imports the idea of the amount of the rates being those currently effective by force of the agreement and it requires the subsisting operation of an agreement for the provision of the sub-section to operate. Any other view would give an operation to the words of the provision which would disregard the expiration of the period of the agreement or its termination by other means.

10 Some curtailment is necessary and that suggested appears to be the reasonable solution. Consistently with this view of the operation of the sub-section the contention by the respondent Shire as to the rating agreement has been that in the events that have happened it has come to an end, so that nothing stands in the way of the Shire rating the appellant without regard to the provisions of the rating agreement.

20 The circumstances producing the termination of the agreement are said to be threefold in character-

1. the failure of a fundamental condition of the agreement that it should continue in operation only so long as the appellant should be the occupier of the refinery site and rateable as such;
2. a mutual consensus that the agreement should be treated as discharged;
3. the rescission of the agreement by the respondent Shire in consequence of the repudiation or fundamental breach of the agreement by the appellant.

30 As to the first of these considerations the issue centres around the existence in the agreement: by a process of implication, of a condition to the effect described. The contention for the respondent Shire has been that the parties must have contemplated the continuance of the appellant's occupation of the refinery site as the foundation of what was to be done under the agreement and intended that it should so continue in order that it should operate.

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The contention for the appellant has been that no such intention can be gathered from the terms of the agreement.

It is clear that the nature and contents of

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the agreement may provide the necessary foundation for the presumed intention. In Taylor v. Caldwell 3 B. & B. 825 (a leading case on frustration of contract) it was said by Blackburn, J. at page 833 in the course of other remarks:

"and there are authorities which we think establish the principle that where from the nature of the contract it appears that the parties must from the beginning have known that it could not be fulfilled, unless when the time for the fulfillment of the contract arrived some particular specified thing continued to exist, so that when entering into the contract they must have contemplated such continuing existence as the foundation of what was to be done, then in the absence of any express or implied warranty that the thing shall exist the contract is not to be construed as a positive contract but as subject to an implied condition that the parties shall be excused in case before breach performance becomes impossible on the perishing of the thing without default of the contractor."

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The principle so stated is not confined to the continued existence of a thing and may extend to the continuance of a state of affairs. In Turner v. Goldsmith (1891) 1 Q.B. 544 at page 550, Lindley, L.J., after citing the above passage from the judgment of Blackburn, J., said this:

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"The substance of that is that the contract will be treated as subject to an implied condition that it is to be in force only so long as a certain state of things continues in those cases only where the parties must have contemplated the continuing of that state of things as the foundation of what was to be done."

In Measures Brothers Limited v. Measures (1910) 2 Ch. 248, Kennedy, L.J. said at page 258:

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"Beyond and besides this implication of law" (a reference to the implication that a party shall not get out of his responsibilities under a contract by disabling the other party from fulfilling his contract)" the courts in construing documents which create

a contractual relationship, such as that of employer, employed, principal or agent, for a specified period will, if from its terms considered in a reasonable and businesslike manner such an implication fairly arises, imply a condition that the contract is to remain in force only so long as a certain state of things continues to exist and will therefore hold that if the condition ceases to exist within the agreed period of relationship neither party can treat the cessation of the performance of the contract which thereupon ensues as an actionable breach of contract. Instances of this kind are to be found in Cowisjee & Nanavhoy v. Lalbhoy Vullavhoy, L.R. 3 Indian Appeals 200, and Turner v. Goldsmith."

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And at page 259 the learned Lord Justice continued:

"When Lindley, L.J. in Turner v. Goldsmith spoke of a contract being subject to an implied condition, that it is to be in force only so long as a certain state of things continues, he did not mean ceasing to be in force for one of the parties only. On both sides alike in the case supposed there is an end in regard to the future of all contractual rights and liabilities."

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The test applied by Kennedy, L.J. was referred to and adopted by Scrutton, L.J. in Reigate v. Union Manufacturing Company (1918) 1 K.B.592 at page 605.

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Turning then to the rating agreement in this case it is found that it is prima facie to last for over forty years. There is to be found in Clause 2 a provision dealing with the amount of the rates to be payable by the appellant company under the Local Government Act in respect of the refinery site. This imposes an obligation in the company to pay and presumably a correlative obligation in the Shire to charge, accordingly. It contemplates occupation of the site by the appellant so as to be a ratepayer. That in itself might permit of intermittent occupation. But the provision is hedged about and linked with the other contents of the agreement. There is a recital of the agreement between the appellant and the State of Victoria. The contents of that agreement are thus made relevant to the nature of the rating agreement; in effect it was recited that

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the appellant had agreed to establish and maintain the refinery on the site subject to a limited right of assignment and delegation. There is also a recital that the Shire is of opinion that the establishment and maintenance of the refinery is beneficial to it and to the State in the respects set out in S.390A of Act 7014. There is also a recital of the fact of the appellant's existing occupation and rateability in respect of the site. But there is to be noted an absence of any provision in the rating agreement giving the appellant a right of disposal of occupation directly or indirectly in contrast to what is provided for in the agreement with the State. This background is not in itself of conclusive effect, but against that background there is to be found a provision in Clause 2(ii) for the amount of the rates payable after the commencement of refining operations on the commissioning date to be calculated according to the capital expenditure of the appellant upon the refinery site from time to time, and there is provision for a minimum, unless it is otherwise agreed in writing between the Shire and the appellant. There is to be found a provision in Clause 5 for the giving to the Shire by the appellant each year of a certified statement of the amount of the appellant's capital expenditure upon the site with details as required, the subsequent annual statements after the 1st to include the amount of such capital expenditure for the previous twelve months; and this is a necessary incident of the rating of the appellant. 10 20 30

There is to be found also a provision in Clause 3 for the appellant to confer with the Shire at the end of the second period of ten years on all matters pertaining to the agreement and its operation and effectiveness.

A general view of these provisions appears to have led Adam, J., in the earlier case, to say (1973 V.R. at p.196) that "the agreement itself from its terms did not contemplate any assignment by the company of any rights and obligations thereunder, or indeed any change of the company's ownership or occupancy of the rated land". 40

In our opinion when the actual provisions which have been referred to, relating to actions to be done by the appellant, are set against the background of the main provisions of the agreement

and what is recited in the agreement, the nature of the contract and its terms, "considered in a reasonable and businesslike manner" (as Kennedy, L.J. said) lead fairly to an inference that the parties intended, and there was an implication to the effect, that the contract was to remain in force only so long as there continued to exist a state of affairs where the refinery site was in the occupation of the appellant, it maintaining the refinery and being in a position to render accounts of its capital expenditure on the site from time to time so as to enable the rates payable by the appellant to be computed. That state of affairs which was so contemplated, and in our opinion intended, ceased to exist as from January 1st, 1970. In our opinion the agreement then ceased to be in force. The respondent's first contention should therefore be upheld.

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As to the second contention the issue centres around the construction and effect of the appellant's letter to the Shire of December 15, 1969, and the Shire's letter to the appellant of February the 9th, 1970, and around the inference to be drawn from the conduct of the parties.

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The appellant's letter, on a proper understanding of it, constituted an intimation to the respondent Shire that as from the beginning of 1970 it was contemplated that the appellant would cease to operate the refinery, and it was suggested that the appellant might cease to exist, and there was an intimation that it was being assumed that the rights and privileges hitherto vested in the appellant by agreement with the Shire would be made available to BP Australia Limited by the Shire "transferring" them to that company.

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The Shire's letter recorded its view of what would be the effect of that change on the rating agreement - that is, that it would then have no effect - and it recorded the Council's attitude that it would allow the agreement to lapse. The appellant had already implemented the change by going into liquidation, yielding up occupation of the refinery, and executing a transfer of the title and the buildings and plant thereon. After the receipt of the Shire's letter the liquidator did nothing with respect to this intimation from the Shire, but presumably, caused the transfer of title to be registered. Thereafter, the appellant ceased

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to supply its statement of capital expenditure for the calculation of the rates.

In our opinion the inference should be drawn from that sequence of events, and without regard to what the Shire did with respect to BP Australia Limited, or what BP Australia Limited did with respect to the Shire, that, if the rating agreement were still subsisting after January 1st, there was mutual acquiescence between the appellant and the Shire that it was to be treated as discharged and inoperative after the receipt of the Shire's letter.

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In our opinion therefore this alternative contention of the respondent should be sustained.

The third contention of the respondent Shire centres around an allegation of an obligation in the appellant to remain in occupation of the site and to maintain operate and use the refinery for the purpose, inter alia, of enabling the rates to be calculated; and it centres around a contention that the respondent effected rescission in consequence of the appellant's failure to carry out these alleged obligations. This contention embraces questions of a wider and more difficult nature and in the light of the conclusions expressed above it is unnecessary to attempt to answer them. Indeed, it is undesirable to try and do so.

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For reasons already given, however, we are of opinion that the agreement was inoperative at the time the appellant resumed occupation of the site and, in particular, at the time of the assessment which was in question in the appeal. The assessment on the ordinary basis, available to the Shire apart from the terms of the agreement, was not inapplicable and the assessment was not excessive on any such account. The order on the case stated should therefore be that the appeal be determined by the order of the County Court dismissing the appeal being confirmed. The respondent's costs of the case stated should be taxed and paid by the appellants.

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The order will be in accordance with these terms.

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Formal Order of the Full Court of
Victoria dated 5th May 1976

In the Full
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IN THE SUPREME COURT)
OF VICTORIA)
IN THE FULL COURT)

C.S. No. 387

No.12

Formal Order
of the Full
Court of
Victoria

5th May 1976

IN THE MATTER of section 304 of
the Local Government Act 1958

- and -

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IN THE MATTER of an Appeal
thereunder by BP REFINERY
(WESTERNPORT) PROPRIETARY
LIMITED

B E T W E E N :

BP REFINERY (WESTERNPORT)
PROPRIETARY LIMITED

Appellant

- and -

THE PRESIDENT COUNCILLORS and
RATEPAYERS OF THE SHIRE OF HASTINGS Respondent

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BEFORE THE FULL COURT THEIR HONOURS MR. JUSTICE
GOWANS, MR. JUSTICE MENHENNITT AND MR. JUSTICE NEWTON
WEDNESDAY THE 5TH DAY OF MAY, 1976

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THIS CASE STATED coming on for hearing before this
Court on the 3rd and 4th days of May, 1976 and this
day and UPON HEARING Mr. Aicken One of Her Majesty's
Counsel and Mr. D. Graham of Counsel for the
Appellant and Mr. Gobbo One of Her Majesty's Counsel
and Mr. Winneke of Counsel for the Respondent and
UPON READING the said Case Stated THIS COURT DOTH
ORDER THAT the appeal be determined by the order of
the County Court at Melbourne dismissing the said
Appellant's appeal to that Court being confirmed and
THAT the Respondent's costs of the Case Stated be
taxed and when taxed be paid by the Appellant to the
Respondent.

Stamps \$23

BY THE COURT

This Order was taken out by Messrs Whiting & Byrne
of 440 Collins Street, Melbourne Solicitors for the
Appellant.

In the Full Court of the Supreme Court of Victoria

No. 13

Order granting Leave to Appeal to Her Majesty in Council dated 17th June 1976

No.13

Order granting Leave to Appeal to Her Majesty in Council

17th June 1976

IN THE SUPREME COURT OF VICTORIA
IN THE FULL COURT) C.S. 387

IN THE MATTER of Section 304 of the Local Government Act 1958

- and -

IN THE MATTER of an Appeal there- 10
under by BP REFINERY (WESTERNPORT) PROPRIETARY LIMITED

B E T W E E N :

BP REFINERY (WESTERNPORT) PROPRIETARY LIMITED Appellant

- and -

THE PRESIDENT COUNCILLORS AND RATEPAYERS OF THE SHIRE OF HASTINGS Respondent

BEFORE THE FULL COURT THEIR HONOURS MR. JUSTICE GOWANS, MR. JUSTICE LUSH AND MR. JUSTICE JENKINSON 20

THE 17TH DAY OF JUNE, 1976

UPON MOTION made to this Court this day on behalf of the abovenamed Appellant for leave to appeal to Her Majesty in Council from the order of the Full Court herein made herein on the 5th day of May, 1976 whereby it was ordered that the appeal be determined by the Order of the County Court at Melbourne dismissing the said Appellant's appeal to that Court being confirmed and that the above-named Respondent's costs of the Case Stated be taxed and when taxed be paid by the Appellant to the Respondent and UPON HEARING Mr. D. Graham of counsel for the Appellant and Mr. J. Winneke of counsel for the Respondent and UPON READING the said Case Stated and the said order of the Full Court and the Notice of Motion dated the 25th day of May, 1976 and the Affidavit of Gilbert 30

James Farrow sworn the 27th day of May, 1976 and filed herein THIS COURT DOTH ORDER that if within 3 months from this date security shall be given by the Appellant to the satisfaction of the Prothonotary of this Court of the value of \$1000 for the prosecution of the said intended Appeal and for the payment of all such costs as may be awarded by Her Majesty in Council to the Respondent and if the Appellant shall within the said period prepare and deliver to the said Prothonotary a copy of the proceedings in relation to the said intended Appeal in accordance with Rule 1 of Order 58B of Chapter 1 of the Rules of the Supreme Court then the said intended Appeal shall be allowed and THIS COURT DOTH DIRECT that upon the Respondent entering into a good and sufficient security to be approved by the said Prothonotary for the due performance of such judgement or order as Her Majesty in Council shall think fit to make in respect of the Respondent, the Respondent shall be at liberty to carry into execution pending the said Appeal any order for costs in favour of the Respondent awarded by the judgment appealed from and THIS COURT DOTH FURTHER ORDER that the costs of this motion be costs in the Appeal.

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No.13

Order granting Leave to Appeal to Her Majesty in Council

17th June 1976
(continued)

BY THE COURT

THIS ORDER was taken out by Messrs. Whiting & Byrne of 440 Collins Street, Melbourne, Solicitors for the Appellant.

30 \$23 Stamps

Cancelled
2/7/76

SUPREME COURT

S E A L

IN THE PRIVY COUNCIL

No. 23 of 1976

O N A P P E A L
FROM THE FULL COURT OF THE SUPREME COURT OF VICTORIA

IN THE MATTER OF SECTION 304 OF THE LOCAL GOVERNMENT
ACT 1908

- and -

IN THE MATTER OF AN APPEAL THEREUNDER BY B.P.REFINERY
(WESTERNPORT) PROPRIETARY LIMITED

B E T W E E N :

B.P. REFINERY (WESTERNPORT) PROPRIETARY
LIMITED

Appellant

- and -

THE PRESIDENT COUNCILLORS AND RATEPAYERS
OF THE SHIRE OF HASTINGS

Respondents

RECORD OF PROCEEDINGS

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