

SILICON DEVELOPMENT ACT 1986

No. 57 of 1986

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SCHEDULE 1

SILICON DEVELOPMENT



SILICON DEVELOPMENT ACT 1986

No. 57 of 1986

AN ACT to provide for matters necessary and incidental to the carrying out of a silicon development at Electrona in this State.

[Royal Assent 20 May 1986]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Silicon Development Act 1986*. Short title.

2—This Act shall commence on the day on which it receives the Royal assent. Commencement.

3—In this Act, unless the contrary intention appears— Interpretation.

“building” includes a structure or a part of a structure;

“Commissioner” means the person appointed and holding office as Commissioner for Town and Country Planning pursuant to section 718 (1) of the *Local Government Act 1962*;

- “ Company ” means the company incorporated in New South Wales under the *Companies (New South Wales) Code* and known as Pioneer Silicon Industries Pty Ltd and formerly known as Tasmanian Silicon Smelters Pty Ltd, and includes the successors and assigns of that company;
- “ development area ” means the area of land situated at Electrona in this State and described in Schedule 1;
- “ Director ” means the person appointed and holding office as Director of Environmental Control pursuant to section 5 (1) of the *Environment Protection Act 1973*;
- “ Director of Construction ” means the person who, for the time being, is the principal officer of the Department of Construction;
- “ discontinuance order ” means an order under section 15 (1);
- “ Environment Protection Appeal Board ” means the appeal board appointed pursuant to section 37 of the *Environment Protection Act 1973*;
- “ Government department ” means a department constituted under the *Tasmanian State Service Act 1984* or constituted by any other enactment as a department within the meaning of that Act;
- “ Head of Agency ” means the Head of an Agency, within the meaning of the *Tasmanian State Service Act 1984*;
- “ land ” includes any land, whether covered by buildings or not, including any place underground and any land covered by water and any body of water on land;
- “ municipality ” means the corporation of the municipality of Kingborough;
- “ principal officer ” means—
- (a) in relation to a Government department, the Head of Agency or, if there is no Head of Agency, the principal officer of the department; and
 - (b) in relation to a State authority, the president, chairman, or other principal or presiding member of the authority or, if the authority comprises a single person, that person;
- “ the regulations ” means the regulations made and in force under this Act;

- “ revocation order ” means an order under section 16 (1);
- “ silicon conditions ” means the conditions, limitations, and restrictions relating to the silicon development and attached to licence No. 3128 issued under the *Environment Protection Act 1973* and includes—
- (a) such amendments to those conditions, limitations, and restrictions as have been agreed on between the Director and the Company made before the commencement of this Act;
 - (b) such amendments to those conditions, limitations, and restrictions as are considered appropriate by the Director, after consultation with the Company, in the light of any decision of the Environment Protection Appeal Board in relation to the silicon development made before the commencement of this Act;
 - (c) such other amendments to those conditions, limitations, and restrictions as are considered appropriate by the Director, after consultation with the Company;
 - (d) such other amendments to those conditions, limitations, and restrictions as are considered appropriate by the Commissioner after consultation with the Company; and
 - (e) such other amendments to those conditions, limitations, and restrictions in the nature of variations, omissions, or additions as the Governor may make pursuant to a variation order;
- “ silicon development ” means the development proposed by the Company in the development area, the plans and applications in respect of which were submitted to the municipality for approval pursuant to the *Local Government Act 1962*;
- “ silicon environmental impact statement ” means—
- (a) the environmental impact statement prepared on behalf of the Company and dated September 1985 relating to a silicon-producing plant to be situated in the development area; and

(b) the Electrona smelter project development impact statement prepared for the Company dated September 1985;

“State authority” means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the Royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister, or another State authority, but does not include a Government department;

“variation order” means an order under section 9 (1).

PART II

PROVISIONS RELATING TO THE SILICON DEVELOPMENT

Division 1—General provisions relating to the silicon development

Authority to
Company to
carry out
the silicon
development.

4—On and after the day on which this Act commences, the Company may, subject to the compliance by the Company with the silicon conditions, carry out the silicon development.

Non-application
of provisions
of certain
Acts, &c., in
relation to
the silicon
development.

5—(1) The provisions of any Act, regulations, rules, or by-laws—

- (a) requiring the approval, consent, or permission of any body or other person in respect of the silicon development;
- (b) empowering any body or other person to grant or refuse its consent to the silicon development;
- (c) prohibiting the silicon development;
- (d) permitting the silicon development only upon specified terms or conditions; or
- (e) regulating or permitting the regulation of the silicon development,

do not apply on or after the day on which this Act commences and are deemed not to have applied during any period preceding that day in relation to the silicon development.

(2) On and after the day on which this Act commences, any provision of Part XVIII of the *Local Government Act* 1962 other than a provision relating to the silicon conditions does not apply where the carrying out of the silicon development would in any way be affected by that provision or the application of that provision.

(3) On and after the day on which this Act commences, an interim order issued pursuant to section 734 of the *Local Government Act* 1962 does not apply in relation to the silicon development during such period as may precede that day.

(4) The law of the State is modified as provided in subsection (1), and as is otherwise necessary to give full effect to the carrying out of the silicon development and the provisions of any law of the State shall, on and after the day on which this Act commences, accordingly be construed subject to any such modification in relation to the carrying out of the silicon development and to any matter or thing in relation to the silicon development.

6—(1) On the day on which this Act commences, the jurisdiction of the municipality to deal with an application under any Act with respect to, or to deal with any other matter or thing under any Act relating to, the silicon development shall cease.

Ouster of jurisdiction of the municipality in relation to the silicon development.

(2) Any proceeding arising out of the jurisdiction referred to in subsection (1), or any dealing with respect to an application, or with any other matter or thing, referred to in that subsection is of no effect on and after the day on which this Act commences.

7—(1) Where the Minister is of the opinion that a Government department or State authority—

Ouster of jurisdiction of Government departments and State authorities in relation to the silicon development.

(a) is or will be authorized or required to deal in any way with the silicon development or with any other matter or thing arising out of or in connection with the silicon development; or

(b) has or will have a material interest in, or is or will be materially affected by, the silicon development,

the Minister may, by notice in writing served on the principal officer of that department or authority, inform that department or authority that, on the service of that notice on that principal officer, the jurisdiction of that department or authority to deal in any way with the silicon development or with any other matter or thing arising out of or in connection with the silicon development shall cease.

(2) On the service of a notice on the principal officer of a Government department or State authority pursuant to subsection (1), the jurisdiction of the department or authority to deal in any way with the silicon development or with any other matter or thing arising out of or in connection with the silicon development shall cease.

(3) Where, pursuant to subsection (2), the jurisdiction of a Government department or State authority to deal in any way with the silicon development or with any other matter or thing arising out of or in connection with the silicon development has ceased, any proceeding arising out of that jurisdiction, or any dealing with respect to the silicon development or any other such matter or thing, is of no effect on and after the day on which this Act commences.

Amendments
of silicon
environmental
impact
statement.

8—(1) Subject to subsection (2), the Minister may from time to time amend, or require the amendment of, the silicon environmental impact statement for the purpose of correcting an error or making modifications that are desirable in view of more accurate or complete data or of technological developments or other matters not contemplated at the time when the statement was prepared.

(2) The Minister may, before exercising his powers under subsection (1), by notice in writing served on any person, require that person to supply him, within the time and in the manner specified in the notice, with such information as is specified in the notice.

(3) A person who, without reasonable excuse, fails to comply with a notice served on him pursuant to subsection (2) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$3 000.

Power of
Governor to
make variation
orders in
respect of
the silicon
development.

9—(1) The Governor may, by order, made on the recommendation of the Minister—

- (a) vary or omit any of the silicon conditions; or
- (b) provide that the carrying out of the silicon development by the Company shall be subject to the compliance by the Company with such other additional silicon conditions as the Governor, on the recommendation of the Minister, determines.

(2) Before a variation order is made, the Minister shall, by notice served on the Company, invite it to make a submission in writing to the Minister with respect to the effect on the Company of the making of the order.

(3) A submission made pursuant to a notice under subsection (2)—

(a) may contain details of any financial and other consequences arising out of the making of the variation order that will affect the Company; and

(b) shall be made in writing to the Minister within 14 days after the date of the service of the notice on the Company.

(4) A variation order shall, subject to section 17 (3), take effect on such day as is specified in the order, being a day not earlier than 21 days after the day on which a notice under subsection (5) is served on the Company.

(5) The Minister shall cause notice in writing of a variation order to be served on—

(a) the Company;

(b) the Director;

(c) the Commissioner;

(d) the municipality; and

(e) the principal officer of a Government department or State authority on whom a notice under section 7 (1) has been served in relation to the silicon development.

(6) A notice under subsection (5) shall contain particulars of—

(a) the day on which, subject to section 17 (3), the variation order to which it relates takes effect; and

(b) the effect of the order.

(7) Where a variation order is made with respect to the silicon development, the provisions of any Act, regulations, rules, or by-laws referred to in section 5 (1) continue not to apply, on and after the day on which the variation order takes effect, in relation to the silicon development, except in so far as any of those provisions is made applicable to or in relation to the silicon development as a result of the making of the variation order.

(8) A variation order is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

Powers and obligations of Government of the State, &c., in relation to the silicon development and variation orders in relation to the silicon development.

10—The Government of the State, the Ministers, instrumentalities of the Crown and the Government of the State, State authorities, other authorities, and municipalities are authorized, empowered, and required to do all things necessary or expedient—

- (a) to enable the Company to carry out the silicon development and to do any matter or thing required to be done in relation to the silicon development; and
- (b) if a variation order is made in relation to the silicon development, to carry out, and give full effect to, the order or any matter or thing in relation to the order.

Offences in relation to the silicon development, &c.

11—(1) A person shall not wilfully do or wilfully omit to do anything that frustrates, hinders, or interferes with—

- (a) the carrying out of the silicon development;
- (b) the operation or implementation of a variation order in relation to the silicon development;
- (c) the ability of the Company or any other person to exercise powers or rights or perform duties or obligations—
 - (i) in relation to the carrying out of the silicon development or any matter or thing required to be done in relation to the silicon development; or
 - (ii) under such a variation order or in respect of any matter or thing in relation to that order.

(2) A person who contravenes the provisions of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$10 000.

(3) Subsection (1) does not apply to or in relation to an industrial dispute within the meaning of the *Industrial Relations Act* 1984.

Application of Division 1 of Part XVI of Local Government Act 1962 to certain buildings and works.

12—Unless the Minister otherwise determines—

- (a) any building or works to be erected on any land required for the purposes of the silicon development shall be erected; or
- (b) any structural alteration to, or enlargement or extension of, any building or works to be erected on, or erected on, that land shall be made,

in accordance with the appropriate provisions of Division 1 of Part XVI of the *Local Government Act* 1962 and any other requirements relating to the development of that land as may be directed by the Director of Construction or by such other principal officer as the Minister may appoint for the purpose.

13—(1) Where, under any Act, regulations, rules, or by-laws, any approval or inspection would be required or discretion would be permitted, but for section 5, in relation to the silicon development, that approval, inspection, or discretion in relation to the development of any land referred to in section 12 shall be given, made, or exercised by the Director of Construction or such other principal officer as the Minister may appoint for the purpose.

Approvals and
inspections
by Director of
Construction,
&c.

(2) The Director of Construction or another principal officer appointed as mentioned in subsection (1) may, by instrument in writing signed by him, delegate the performance of the functions imposed on him under that subsection to such person as he may determine.

14—(1) The Director of Construction or another principal officer appointed as mentioned in section 13 (1) shall, if in his opinion any building or works, or any structural alteration, enlargement, or extension, referred to in section 12 complies or comply with—

Certificate of
compliance.

- (a) the provisions of Division 1 of Part XVI of the *Local Government Act* 1962;
- (b) any requirements of the Director of Construction made pursuant to section 12;
- (c) any determination of the Minister made pursuant to that last-mentioned section;
- (d) any plans and specifications approved by the Director of Construction or another principal officer pursuant to section 13 (1); and
- (e) any other Act, or any regulations, rules, or by-laws, relating to development,

issue a certificate to that effect.

(2) A certificate issued under subsection (1) is conclusive evidence that at the date on which the certificate was issued the building, works, structural alteration, enlargement, or extension to which the certificate relates complied with the matters referred to in that subsection.

(3) Where the Director of Construction or another principal officer appointed as mentioned in section 13 (1) issues a certificate pursuant to subsection (1), no appeal lies in respect of the issue of that certificate or any matter relating to or in respect of that certificate.

Power of
Governor to
make dis-
continuance
orders.

15—(1) Subject to subsection (2), the Governor may, by order made on the recommendation of the Minister, declare that the Company shall not carry out, or, as the case may be, not proceed with the carrying out of, the silicon development.

(2) A discontinuance order may be made under subsection (1) only where—

- (a) the Company notifies the Minister in writing that it does not intend to carry out, or has ceased to carry out, the silicon development;
- (b) the Minister is otherwise satisfied that the Company does not intend to carry out, or has ceased to carry out, the silicon development;
- (c) any of the silicon conditions is contravened or not complied with; or
- (d) in the opinion of the Minister, there is an adverse change of a major nature in respect of the silicon environmental impact statement relating to the silicon development.

(3) Before making a recommendation referred to in subsection (1), the Minister shall, by notice served on the Company, invite it to make a submission in writing to the Minister with respect to the effect on the Company of the making of the discontinuance order referred to in the notice.

(4) A submission made pursuant to a notice under subsection (3)—

- (a) may contain details of any financial and other consequences arising out of the making of the discontinuance order that will affect the Company; and
- (b) shall be made in writing to the Minister within 14 days after the date of the service of the notice on the Company.

(5) Where the Minister is satisfied, after considering a submission made pursuant to a notice under subsection (3) with respect to the contravention of, or non-compliance with, any of the silicon conditions to which the notice relates, that the contravention or non-compliance does not warrant the making of a discontinuance order, he shall not make the recommendation referred to in subsection (1).

(6) A discontinuance order shall take effect on such day as is specified in the order, being a day not earlier than 21 days after the day on which a notice under subsection (7) (b) is served on the Company.

(7) Where a discontinuance order is made—

(a) on the day on which the discontinuance order takes effect, the silicon development shall not commence or continue; and

(b) the Minister shall, by notice in writing served on—

- (i) the Company, inform it;
- (ii) the Commissioner, inform him;
- (iii) the municipality, inform it; and
- (iv) the principal officer of the Government department or State authority on whom a notice has been served under section 7 (1), inform him,

of the making of the discontinuance order, the day on which that discontinuance order takes effect, and the effect of that discontinuance order.

(8) Where a discontinuance order is made, if the Company commences, or continues with, the silicon development, it is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$50 000 and to a daily penalty not exceeding \$10 000 for each day on which the offence continues after its conviction for that offence.

(9) A discontinuance order is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

Revocation of
variation
orders.

16—(1) The Governor may, by order made on the recommendation of the Minister, revoke a variation order.

(2) Before making a recommendation referred to in subsection (1), the Minister shall, by notice served on the Company, invite it to make a submission in writing to the Minister with respect to the effect on the Company of the making of the relevant revocation order.

(3) A submission made pursuant to a notice under subsection (2)—

(a) may contain details of any financial and other consequences arising out of the making of the revocation order that will affect the Company; and

(b) shall be made in writing to the Minister within 14 days after the date of the service of the notice on the Company.

(4) A revocation order shall take effect on such day as is specified in the order, being a day not earlier than 21 days after the day on which a notice under subsection (5) (b) is served on the Company.

(5) Where a revocation order is made revoking a variation order—

(a) on and after the day on which the revocation order takes effect, the Company may, as the case requires, commence or continue to carry out the silicon development as if the variation order had not been made; and

(b) the Minister shall, by notice in writing served on—

(i) the Company, inform it;

(ii) the Commissioner, inform him;

(iii) the municipality, inform it; and

(iv) the principal officer of the Government department or State authority on whom a notice has been served under section 7 (1), inform him,

of the making of the revocation order, the day on which that revocation order takes effect, and the effect of that revocation order.

(6) A revocation order is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

Division 2—Appeals

17—(1) Where the Company is aggrieved by—

Appeals to
appeal boards.

- (a) any of the silicon conditions existing at the commencement of this Act;
- (b) the variation or omission of such condition, made by a variation order; or
- (c) an additional silicon condition contained in a variation order,

the Company may appeal to the appropriate appeal board or boards.

(2) An appeal under this section shall be instituted within a period of 21 days after—

- (a) the commencement of this Act, in the case of an appeal to which subsection (1) (a) applies; or
- (b) the service on the appellant of a notice under section 9 (5), in the case of any other appeal.

(3) Where an appeal is brought under this section—

- (a) in the case of an appeal to which subsection (1) (a) applies, the Company is not required to observe the silicon condition;
- (b) in the case of any other appeal, the variation order to which the appeal relates shall not have effect so far as it relates to the silicon condition,

that is the subject of the appeal until the determination or abandonment of the appeal or until such later day as the appropriate appeal board may determine.

(4) Where the Company wishes to institute an appeal under this section and is uncertain as to the appropriate appeal board with which the appeal shall be instituted, the Company shall seek a determination on the matter from the Minister.

(5) The Minister may make a determination for the purposes of subsection (4) and such a determination is final.

(6) An appeal under this section to the appropriate appeal board shall be heard and determined as if it were an appeal made to the appeal board under the Act providing for the establishment of that appeal board or under any other Act providing for the hearing and determination of that last-mentioned appeal by that appeal board.

(7) On the hearing of an appeal under this section, the appropriate appeal board hearing the appeal, unless it dismisses the appeal, may—

- (a) in the case of an appeal to which subsection (1) (a) applies, direct or determine that the Company is not required to comply with the silicon condition that is the subject of the appeal;
- (b) in the case of an appeal to which subsection (1) (b) applies, direct or determine that the Company shall comply with the silicon conditions as if the variation or omission that is the subject of the appeal had not been made; or
- (c) in the case of an appeal to which subsection (1) (c) applies, direct or determine that the Company shall comply with the silicon conditions as if the condition that is the subject of appeal had not been added to those conditions.

(8) The direction or decision of an appropriate appeal board in respect of an appeal made to it under this section is final and the Minister shall give effect to the direction or decision accordingly.

(9) In this section, “appropriate appeal board” means, in the case of an appeal that relates to—

- (a) building, the Building Appeal Board constituted under section 461B of the *Local Government Act 1962*;
- (b) the environment, the Environment Protection Appeal Board; or
- (c) planning, the Planning Appeal Board established by section 733G of the *Local Government Act 1962*.

Provision
with respect
to certain
decisions
of the
Environment
Protection
Appeal Board
and other
matters.

18—Notwithstanding Part V of the *Environment Protection Act 1973*, any decision of the Environment Protection Appeal Board, whether made before or after the commencement of this Act, in respect of any appeals under that Act relating to the silicon development is not binding and is of no effect and—

- (a) no further appeal lies;

- (b) no other action or proceeding shall be brought;
 - (c) no writ of certiorari, prohibition, or other prerogative writ shall issue or be granted; or
 - (d) no declaratory judgment shall be given,
- in respect of the decision or the silicon development.

19—(1) Except as provided by this Act and notwithstanding the provisions of any other Act or of any regulations, rules, or by-laws—

Limitation on rights of appeal and other rights.

- (a) a person is not entitled to appeal to a body or other person, court, or tribunal;
 - (b) no other action or proceeding shall be brought;
 - (c) no writ of certiorari, prohibition, or other prerogative writ shall issue or be granted; or
 - (d) no declaratory judgment shall be given,
- in respect of any matter or thing arising out of or relating to the silicon development or to the carrying out of the silicon development.

(2) No body or other person shall acquire or retain any vested or contingent right to appeal against any opinion or determination of the Minister in relation to the silicon environmental impact statement or the silicon development.

Division 3—Miscellaneous

20—(1) Where the Company is injuriously affected by—

Compensation.

- (a) a discontinuance order;
 - (b) the variation or omission of a silicon condition made by a variation order; or
 - (c) an additional condition contained in a variation order,
- the Company is entitled to recover from the Crown compensation for expenditure incurred pursuant to its carrying out the silicon development at any time during the period commencing on the day on which this Act commences and ending on the day on which the discontinuance order or the variation order takes effect.

(2) In subsection (1), “expenditure” means expenditure rendered abortive by—

- (a) a discontinuance order; or

- (b) reason of the variation or omission of a silicon condition, or the addition of a condition, made by a variation order,

and includes the amount of any losses sustained, and the cost of any damage incurred, as a result of that order.

Right to
bring action.

21—A person who suffers injury to his person or property by reason of the negligent carrying out by the Company or its agents of the silicon development or the negligent carrying out by the Company or its agents of any matter or thing arising out of or relating to the silicon development may bring an action for damages against the Company or its agents in a court of competent jurisdiction.

Action that
may be taken
on contraven-
tion of, or
failure to
comply with,
silicon
conditions.

22—Where the Company contravenes, or fails to comply with, any of the silicon conditions—

- (a) the Attorney-General may, on behalf of the Crown, apply to the Supreme Court for an injunction in respect of that contravention or failure to comply; and
- (b) where that contravention or failure to comply constitutes a nuisance at common law, a person whose property is injuriously affected by that contravention or failure to comply may bring an action against the Company in respect of that nuisance in a court of competent jurisdiction.

PART III

MISCELLANEOUS

Certain errors
or omissions
not to
invalidate
silicon
environmental
impact
statement.

23—Any error or omission in relation to the preparation of the silicon environmental impact statement does not invalidate that statement.

Service of
notices.

24—(1) Where under this Act a notice is authorized or required to be served on a person, the notice may be served—

- (a) in the case of a person who is neither a body corporate nor a firm—
 - (i) by delivering it to him personally;
 - (ii) by leaving it at that person's place of residence last known to the person required to serve the notice with someone who apparently

resides there, or at that person's place of business or employment last known to the person serving the notice with someone who is apparently employed there, being in either case a person who has or apparently has attained the age of 16 years; or

- (iii) by sending it by post to that person's place of residence, business, or employment last known to the person serving the notice;

(b) in the case of a body corporate, other than a municipality—

- (i) by delivering it to the secretary of the body corporate personally;
- (ii) by leaving it at the registered office of the body corporate or at the place or principal place of business of the body corporate in Tasmania with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by post to the registered office of the body corporate or to the place or principal place of business of the body corporate;

(c) in the case of a municipality, in the manner provided by section 873 (1) of the *Local Government Act* 1962; or

(d) in the case of a firm—

- (i) by delivering it to a member of the firm personally;
- (ii) by leaving it at the place or principal place of business of the firm in Tasmania last known to the person required to serve the notice with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by post to the place or principal place of business of the firm in Tasmania last known to the person required to serve the notice.

(2) A reference in subsection (1) to the registered office of a body corporate includes a reference to a registered office that is outside Tasmania.

(3) The provisions of this section are in addition to the provisions of section 528 of the *Companies (Tasmania) Code*.

Regulations.

25—The Governor may make regulations for the purposes of this Act.

SCHEDULE 1

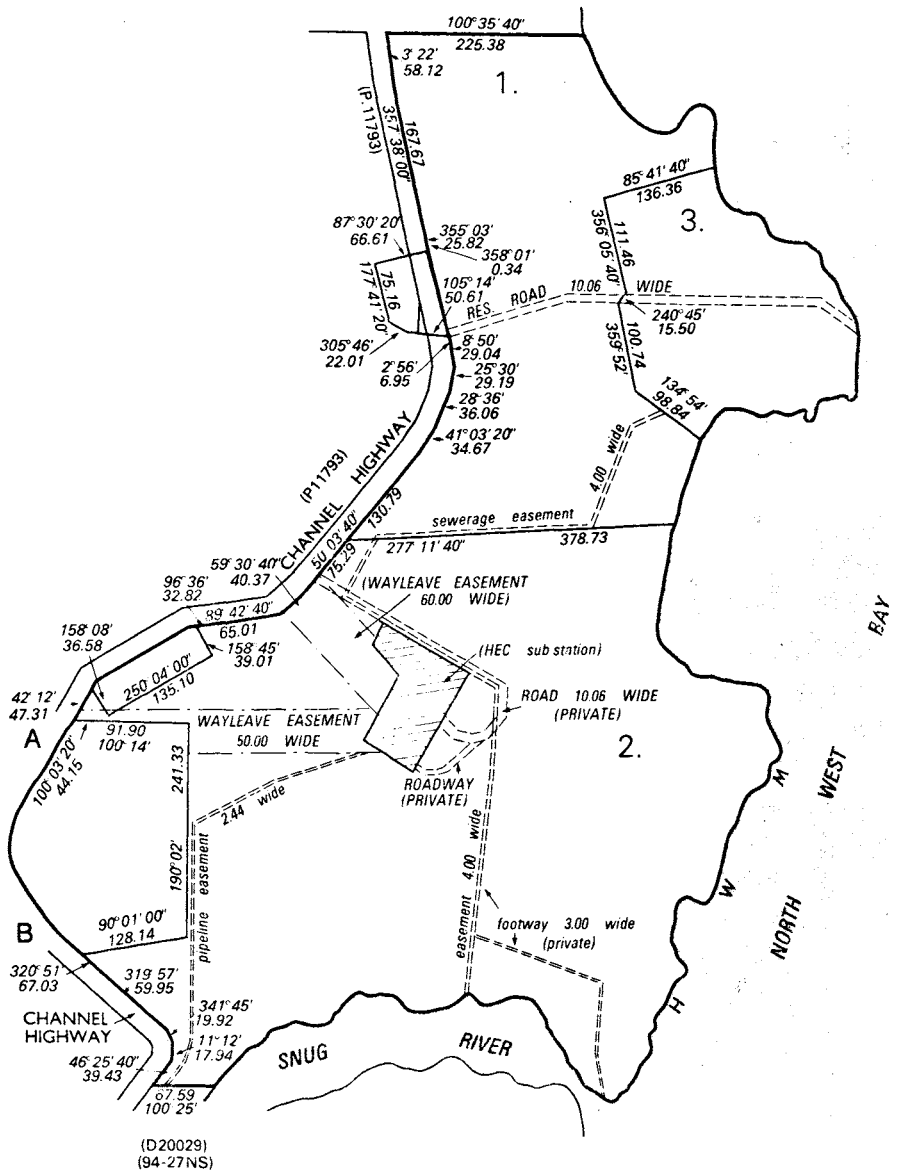
Section 3

SILICON DEVELOPMENT

PART I

All that piece of land situated at Electrona in the Parish of Kingborough Land District of Buckingham in Tasmania being bounded on the north by a line of 225·38 metres commencing on the eastern boundary of the Channel Highway and running in an easterly direction to the high-water mark of North West Bay then on the east by that high-water mark by various bearings in a general southerly direction to the Snug River thence on the south in a general westerly direction by the high-water mark of the Snug River and a westerly line of 67·59 metres to the eastern boundary of the Channel Highway thence on the west, south-west, and north-west by numerous bearings and distances in a general northerly direction along the eastern boundary of the Channel Highway to the point of commencement as the land is shown surrounded by heavy black boundary lines on the plan shown in Part II.

PART II



NOTE—The boundary between points A and B is the eastern boundary of the Channel Highway and is drawn on this plan in its approximate position and for the purposes of illustration only.