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**ELIZABETHAE II REGINAE**

A.D. 1972

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**No. 144 of 1972**

An Act to approve, ratify and give effect to an Indenture made between the State of South Australia, the Minister of Marine and the Australian Mutual Provident Society relating to the development of the portion of the State to be known as North Haven and for matters relating thereto, and for other purposes.

[Assented to 7th December, 1972]

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

- Short title.** 1. This Act may be cited as the "North Haven Development Act, 1972".
- Commencement.** 2. This Act shall come into operation on a day to be fixed by proclamation.
- Interpretation.** 3. (1) In this Act, unless the contrary intention appears—  
 "land" includes any estate or interest (legal or equitable) in land and any easement, right, power or privilege in, under, over, affecting or in connection with land:  
 "the Indenture" means the indenture, including the schedules, general arrangement, the indenture map and other annexures thereto, which was made on the thirteenth day of November, 1972 between the Honourable Donald Alan Dunstan, Premier of the State of South Australia for and on behalf of the State of the first part, the Minister

of the second part and the Society of the third part and which has been deposited at the General Registry Office at Adelaide bearing No. 1322 of 1972; and subject to section 4 of this Act where, pursuant to that indenture and this Act, that indenture has been subsequently amended by any agreement or agreements in writing made before or after the commencement of this Act and deposited in the General Registry Office at Adelaide as required by paragraph (a) of subsection (2) of this section, includes the first mentioned indenture as so amended by that other agreement or those agreements:

“the Minister” means the corporation sole whose corporate name is the Minister of Marine:

“the Planning Regulations” means the “Metropolitan Development Plan Corporation of the City of Port Adelaide Planning Regulations—Zoning” made the ninth day of June, 1972, as amended:

“the Society” means Australian Mutual Provident Society, a body corporate incorporated by an Act of the Parliament of New South Wales and registered in this State as a foreign company.

(2) Where the Indenture that has been deposited in the General Registry Office at Adelaide bearing No. 1322 of 1972 has been amended by any subsequent agreement in writing between the parties to the Indenture as provided in clause 20 of the Indenture, then, notwithstanding anything contained in the Registration of Deeds Act, 1935, as amended, or any other Act—

(a) the Minister shall cause each of such agreements to be deposited in the General Registry Office at Adelaide and shall cause the Registrar-General of Deeds to be informed in writing that such agreement is an amendment of the Indenture;

and

(b) the Registrar-General of Deeds shall, by endorsement on the outside cover page of the Indenture, indicate that the Indenture has been amended by such agreement which shall be referred to in the endorsement by the General Registry Office number assigned thereto.

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

Amending  
agreements to  
be approved  
by Act.

4. (1) Notwithstanding anything in section 3 of this Act no agreement, made on or after the commencement of this Act, purporting to amend the Indenture shall, for the purposes of this Act, have any force or effect until it has been approved and ratified by an Act.

(2) Any Act that approves and ratifies an agreement referred to in subsection (1) of this section may provide that the agreement shall be deemed to have been approved and ratified on a day that occurred before the day on which that Act was enacted.

Ratification of  
the Indenture.

5. (1) The Indenture is hereby approved and ratified.

(2) The Premier, the Minister and the Government of the State are hereby authorized, empowered and required to do all things necessary or expedient for the carrying out of and the giving of full effect to the Indenture.

Acquisition of  
land.

6. For the purposes of giving effect to the Indenture the Minister shall have power either by agreement or compulsorily to acquire and take, subject to and in accordance with the Land Acquisition Act, 1969, as amended—

(a) the whole or any of the lands within North Haven that are reasonably necessary to be acquired for the purposes of the scheme;

and

(b) such other lands without North Haven as the Minister may agree to acquire for the purposes of the scheme,

and any person in whom is vested an estate in fee simple or a lesser estate in any such land shall notwithstanding any other Act or law or any instrument have power—

(c) to enter into and give effect to any agreement with the Minister to sell or to transfer to him;

and

(d) effectively to convey to him,

any such estate in any such land.

Closure of  
roads and  
vesting of  
same and  
other lands in  
the Minister.

7. (1) Notwithstanding the provisions of any other Act and without limiting any other provision of this Act, the Minister may from time to time, at the request of the Society, by notice published in the *Gazette*, close such roads within North Haven as shall not be required as roads for the implementation of the scheme.

(2) Upon the closure of those roads the land that comprised the roads shall, without the payment by the Minister or the Society of any compensation or consideration therefor, vest in the Minister for an estate in fee simple freed from all encumbrances, other than any easement in the name of the Minister of Works.

8. Notwithstanding the provisions of any Act or law, and without limiting the generality of the other provisions of this Act, all lands within North Haven that—

Vesting of certain lands in the Minister.

(a) comprise roads already closed before the thirteenth day of November, 1972 and were immediately before the day of the commencement of this Act, vested in the Crown, some person on behalf of the Crown or the Council;

or

(b) being part of the subdivided lands are not specifically referred to in the schedules to the Indenture and were immediately before the day of the commencement of this Act, vested in the Crown, some person on behalf of the Crown or the Council,

shall, to the extent that they were not vested for an estate in fee simple in the Minister, and without payment by the Minister or the Society of any compensation or consideration therefor, be vested in the Minister for an estate in fee simple freed from all encumbrances other than any easement in the name of the Minister of Works.

9. When land has become vested in the Minister by virtue of section 7 or section 8 of this Act—

Registration of certain land in the name of the Minister.

(a) the Registrar-General shall, on the application of the Minister, register the land under the provisions of the Real Property Act, 1886, as amended, in the name of the Minister to the extent of the estate so vested in the Minister;

and

(b) if required by the Registrar-General, in any case where an application is made under this section, the Minister shall furnish the Registrar-General with a plan of the land to which the application relates certified by a licensed surveyor.

Provisions for bringing land within North Haven under the provisions of the Real Property Act.

### 10. Where—

- (a) by virtue of this Act, any land that is not under the provisions of the Real Property Act, 1886, as amended, becomes vested in the Minister for an estate in fee simple;
- (b) by virtue of the acquisition by agreement by the Minister of any land, the Minister has become the owner of an unencumbered estate in fee simple in any land within North Haven that is not under the Real Property Act, 1886, as amended;

or

- (c) any land within North Haven that belongs to the Crown and is not under the provisions of the Real Property Act, 1886, as amended, is held by the Minister in his name or for and on behalf of the Crown by virtue of a proclamation or dedication,

the Registrar-General shall, notwithstanding anything contained in the Real Property Act, 1886, as amended, or any other Act, on the application in writing of the Minister, and upon the furnishing by the Minister of such plan or plans of the land referred to in the application, certified by a licensed surveyor, as the Registrar-General may require, and without the execution of any transfer, conveyance, or other instrument or document, or the production of any instrument or document of title, and without any further action by the Registrar-General than is required by this section, bring the land under the provisions of the Real Property Act, 1886, as amended, by issuing a certificate of title under that Act for an unencumbered estate in fee simple in the land in the name of the Minister.

Access to North Haven by the Society.

11. (1) For the purposes of giving the Society full and unrestricted access to, over or in and upon North Haven (other than any lands comprised in North Haven in respect of which an estate in fee simple is vested in some person other than the Crown, an instrumentality of the Crown or the Council) and the waters of Gulf St. Vincent contiguous with North Haven the Minister may, by notice in the *Gazette*, modify or vary, in the manner set out in the notice, any Act or law or instrument having effect under any Act or law that, but for this section, would limit or restrict that full and unrestricted access.

(2) For the purposes of any Act, law or instrument referred to in subsection (1) of this section compliance by the Society with the Act, law or instrument as so modified or varied shall be deemed to be compliance with the Act, law or instrument.

12. Notwithstanding anything in the Planning and Development Act, 1966-1967, as amended, for the purposes of that Act and of any regulation, Development Plan or instrument having effect under that Act—

Rezoning of  
portion of  
North Haven.

- (a) those portions of the subdivided lands that were, immediately before the day of commencement of this Act, zoned for light industrial purposes pursuant to the Planning Regulations, shall on and from that day be deemed for all purposes to have been rezoned as Residential R 2 and those Regulations shall apply and have effect accordingly;

and

- (b) those portions of the subdivided lands, being portion of Harbours Board Reserve Blocks 10 and 30, that immediately before the day of commencement of this Act were unzoned, shall on and from that day be deemed for all purposes—

- (i) to be zoned as Residential R 2;

and

- (ii) to be subject to the Planning Regulations to the extent that they would be if they were included within the area of the Council.

13. (1) Notwithstanding anything in the Planning and Development Act, 1966-1967, as amended, the Planning Regulations in so far as they relate to or touch on North Haven or lands adjacent to North Haven, shall not, during the prescribed period, except with and in accordance with the prior written approval of the Society, be repealed or amended.

Certain  
planning  
regulations not  
to be varied.

(2) Any purported repeal or amendment of the Planning Regulations in contravention of subsection (1) of this section shall, notwithstanding any Act or law to the contrary, be void and of no effect.

(3) Notwithstanding anything in the Planning and Development Act, 1966-1967, as amended, or any regulation, Development Plan or instrument having effect under that Act, the Council shall not, during the prescribed period except with and in accordance with the prior written consent of the Society in relation to North Haven or the land adjacent to North Haven—

- (a) grant its consent to any land use for which the prior consent of the Council is required pursuant to Part III of the Planning Regulations;

(b) grant its consent to the use of any land not falling within any Use Group referred to and specified in the Third Schedule to the Planning Regulations or which, though falling within any Use Group permitted under Regulation 7(1) or permitted with prior consent under Regulation 7(2) of the Planning Regulations within North Haven, does not comply with the requirements of Part IV of the Planning Regulations;

or

(c) grant its consent to a change of use of land from an existing use which is not permitted under Part III of the Planning Regulations to another use pursuant to the power in that behalf contained in Part V of the Planning Regulations.

(4) Any consent granted in contravention of subsection (3) of this section shall, notwithstanding any Act or law to the contrary, be void and of no effect.

(5) In this section—

“the prescribed period” means the period commencing on and including the day of commencement of this Act and concluding on and including the last day of the third year that next follows the day on which the Minister delivers to the Society pursuant to the provisions of the Indenture a memorandum of transfer in registrable form of the balance of the subdivided lands.

**Reserves.**

**14.** Notwithstanding anything contained in the Planning and Development Act, 1966-1967, as amended—

(a) the Society shall not be required to provide in relation to the subdivided lands reserves to the extent required by that Act;

and

(b) the Society shall not be required to make any contribution to the Planning and Development Fund pursuant to section 52 of that Act in respect of the subdivided lands.

**Entry into  
North Haven.**

**15.** (1) The Minister may, at the request of the Society, by notice published in the *Gazette* from time to time—

(a) regulate or prohibit the entry into or egress from any portion of North Haven;

and

(b) regulate the activities of any person within North Haven, until the final completion of the major works and the Minister may by notice published in a like manner revoke or amend any such notice.

(2) A person who contravenes or fails to comply with a provision of a notice published under this section shall be guilty of an offence and, on conviction by a court of summary jurisdiction, shall be liable to a penalty not exceeding two hundred dollars.

16. (1) In this section—

Authorized  
persons.

“authorized person” means a person appointed under this section as an authorized person for the purposes of this section.

(2) The Minister may, by notice published in the *Gazette*, from time to time, appoint such persons as he thinks fit to be authorized persons.

(3) An authorized person shall hold office as such from such day as is specified in the notice of his appointment until—

(a) he dies;

(b) he resigns by notice in writing served on the Minister;

or

(c) he is removed from office by notice in writing given to him by the Minister.

(4) Where an authorized person has reason to believe that any person is acting or has acted in contravention of, or in such a manner as not to comply with, any notice referred to in subsection (1) of section 15 of this Act, the authorized person may require that person to state his full name and address.

(5) A person who fails or refuses truthfully to state his full name and address upon being required to do so by the authorized person shall be guilty of an offence.

(6) Where an authorized person has reason to believe that a person has committed an offence under subsection (5) of this section the authorized person may apprehend that person and as soon as practicable thereafter deliver that person into the custody of a member of the police force.

(7) A person apprehended by an authorized person under subsection (6) of this section who fails to remain in the custody of the authorized person until such time as that person is delivered into the custody of a member of the police force shall be guilty of an offence.



(8) A person guilty of an offence under this section shall on conviction by a court of summary jurisdiction be liable to a penalty not exceeding two hundred dollars.

**Indemnity.**

17. (1) The moneys that may be required to be paid by the Minister for the purposes of clause 11 of the Indenture shall be paid out of the General Revenue of the State which is hereby to the necessary extent appropriated accordingly.

(2) Clause 11 of the Indenture shall by force of this section apply to and in relation to a person or authority referred to therein to the same extent that it would apply if that person or authority were a party to, and were bound by, the Indenture.

**Society's road making responsibilities limited.**

18. (1) Notwithstanding anything contained in the Planning and Development Act, 1966-1967, as amended, the Local Government Act, 1934, as amended, or in any other Act or law, the Society—

(a) shall not be required to form, construct, pave or seal or to make any binding arrangement for the forming, constructing, paving or sealing of the roadway of any proposed road or street within North Haven to a width in excess of 7.5 metres and shall not be required to pave any such road or street with a pavement of a higher standard than that which, in accordance with recognized engineering design practice, is appropriate to the traffic to be carried by that road or street;

(b) shall not be required to form, construct, pave or seal or to make any binding arrangement for the forming, constructing, paving or sealing of any existing road or street within North Haven other than Osborne Road;

(c) shall not be required to form, pave or seal Osborne Road to a greater width than 7.5 metres or to higher standards of engineering design and specifications than may be agreed upon by the Society, the Council and the Commissioner of Highways having regard to recognized engineering design practice, efficiency and economy,

but nothing in this subsection shall be construed as limiting, restricting or otherwise affecting, any obligation or duty of the Society to comply with the provisions of the Planning and Development Act, 1966-1967, as amended, or any other Act or law, relating to the forming and construction of water tables, channels, kerbs or footpaths of any proposed road or street within North Haven.

(2) If any dispute arises between the Society and any other party as to such standard or requirement, either party may, by giving notice in writing to the other party, refer the question in dispute to arbitration in accordance with clause 27 of the Indenture and the decision of the arbitrator on that question shall be binding upon the parties.

19. The South Australian Railways Commissioner and the Commissioner of Highways are hereby authorized and required to carry out the works referred to in clause 13 of the Indenture.

South Australian Railways Commissioner and the Commissioner of Highways to carry out certain works.

20. Any works that the Minister carries out or is required to carry out pursuant to clause 8 of the Indenture shall not be a public work within the meaning of the Public Works Standing Committee Act, 1927, as amended.

Certain works not to be public works.

21. Nothing in the Local Government Act, 1934, as amended, the Highways Act, 1926, as amended, or the South Australian Railways Commissioner's Act, 1936, as amended, shall be held or construed as limiting or restricting the right or power of the Society to carry out and give effect to the provisions of clause 14 of the Indenture.

Rights of Society over certain roads and railways.

22. (1) The Mining Act, 1971, as amended, shall not apply to or in relation to any mining or quarrying operations carried out pursuant to clause 15 of the Indenture.

Non-application of Mining Act.

(2) Nothing in subsection (1) of this section shall be held as limiting or restricting the application of any Act or law other than the Mining Act, 1971, as amended, to or in relation to any mining or quarrying operations referred to in that subsection.

23. During the carrying out of the works necessary or incidental to the implementation of the scheme no person shall in any legal proceedings be entitled to any order or decree by way of injunction prohibiting the carrying out of such works or any part thereof on any ground or grounds arising from or associated with any nuisance of any kind resulting from the carrying out of the works or any part thereof.

No injunction shall lie in case of nuisance.

24. Notwithstanding anything contained in any Act or law to the contrary—

Obligation of certain persons or bodies.

(a) the South Australian Railways Commissioner;

(b) the Minister of Education;

- (c) the South Australian Housing Trust;
- (d) the Council;
- and
- (e) the Commissioner of Highways,

are hereby authorized, empowered and required to do all things necessary for the purposes of giving effect to clause 17 of the Indenture.

Remission of  
duties and fees.

**25.** Where in the Indenture the parties thereto have agreed or purported to agree that in relation to a particular matter, transaction or thing or in particular circumstances no duty, tax, charge, fee or rate shall be paid, demanded, required or levied then, notwithstanding any Act or law to the contrary, no such duty, tax, charge, fee or rate shall be paid, demanded, required or levied in respect of that matter, transaction or thing or in the particular circumstances.

Application of  
this Act to  
lands subject  
to Real  
Property Act.

**26.** Notwithstanding the provisions of the Real Property Act, 1886, as amended, this Act shall apply to land that is subject to the provisions of that Act.

Application of  
Arbitration Act.

**27.** The Arbitration Act, 1891, as amended, shall apply and have effect to and in relation to the Indenture and all disputes arising therefrom as if—

- (a) clause 27 of the Indenture were a submission as defined in that Act;
- and
- (b) the parties to the Indenture and all persons named in the Indenture, not being parties to the Indenture, were parties to that submission.

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

M. L. OLIPHANT, Governor