

South Australia

North Haven Development Act 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.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *North Haven Development Act 1972*.

3—Interpretation

- (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 Amending Indenture means the agreement between the Honourable David Oliver Tonkin, Premier of the State of South Australia for and on behalf of the State of the first part, the Minister of the second part, the Minister of Education of the third part and the Society of the fourth part, dated the seventh day of June, 1982, and made for the purpose of amending the Indenture and deposited in the General Registry Office at Adelaide and numbered No. 108 of 1982;

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 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;

the Trust means the North Haven Trust.

- (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.
- (4) After the commencement of the *Planning Act 1982* a reference in the Indenture to Planning Regulations shall be construed as a reference to the corresponding provisions of the Development Plan constituted under that Act.

4—Amending agreements to be approved by Act

- (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.

5—Ratification of the Indenture

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

5A—Ratification of Amending Indenture

The Amending Indenture is approved and ratified.

6—Acquisition of land

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.

7—Closure of roads and vesting of land comprising same in the Minister

- (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—Vesting of certain other lands in the Minister

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—

- (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—Registration of certain land in the name of the Minister

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

- (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.

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

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; or
- (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.

11—Access to North Haven by the Society

- (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.

14—Requirements relating to reserves

Notwithstanding anything contained in the *Real Property Act 1886*—

- (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 in respect of the subdivided lands.

15—Control of entry into, and conduct within, North Haven

- (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—Authorised persons

- (1) In this section—

authorised person means a person appointed under this section as an authorised 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 authorised persons.
- (3) An authorised person shall hold office as such from such day as is specified in the notice of his appointment until—
 - (a) he dies; or
 - (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 authorised 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 authorised 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 authorised person shall be guilty of an offence.
- (6) Where an authorised person has reason to believe that a person has committed an offence under subsection (5) of this section the authorised 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 authorised person under subsection (6) of this section who fails to remain in the custody of the authorised 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.

17—Indemnity

- (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.

18—Society's road making responsibilities limited

- (1) Notwithstanding anything contained 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 recognised 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 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 recognised 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 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—Authority and duty to carry out certain works

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

20—Certain works not to be public works

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.

21—Rights of Society over certain roads and railways

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.

22—Non-application of Mining Act

- (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.

- (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—No injunction shall lie in case of nuisance

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.

24—Obligations of certain persons or bodies

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

- (a) the South Australian Railways Commissioner; and
- (b) the Minister of Education; and
- (c) the South Australian Housing Trust; and
- (d) the Council; and
- (e) the Commissioner of Highways,

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

25—Remission of duties and fees

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.

26—Application of this Act to lands subject to Real Property Act

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.

27—Application of Arbitration Act

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.

28—Interpretation of clause 16(1)-(4) of the Indenture after commencement of *North Haven Trust Act 1979*

As from the commencement of the *North Haven Trust Act 1979* references to the Minister in subclauses (1), (2), (3) and (4) of clause 16 of the Indenture shall be read and construed as references to the Trust.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1972	144	<i>North Haven Development Act 1972</i>	7.12.1972	7.12.1972 (<i>Gazette 7.12.1972 p2538</i>)
1979	31	<i>North Haven Trust Act 1979</i>	15.3.1979	31.5.1979 (<i>Gazette 31.5.1979 p1613</i>)
1982	62	<i>Statutes Amendment (Planning) Act 1982</i>	1.7.1982	4.11.1982 (<i>Gazette 4.11.1982 p1304</i>)
1982	76	North Haven Development Act Amendment Act 1982	2.9.1982	2.9.1982 (<i>Gazette 2.9.1982 p634</i>)

Provisions amended since 3 February 1976

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	..
s 3		
s 3(1)		
the Amending Indenture	inserted by 76/1982 s 3	2.9.1982
<i>the Planning Regulations</i>	<i>deleted by 62/1982 s 3(8) (Sch Pt 8)</i>	<i>4.11.1982</i>
the Trust	inserted by 31/1979 s 5 (Sch 3)	31.5.1979
s 3(4)	inserted by 62/1982 s 3(8) (Sch Pt 8)	4.11.1982
s 5A	inserted by 76/1982 s 4	2.9.1982
<i>ss 12 and 13</i>	<i>deleted by 62/1982 s 3(8) (Sch Pt 8)</i>	<i>4.11.1982</i>
s 14	amended by 62/1982 s 3(8) (Sch Pt 8)	4.11.1982
s 18		
s 18(1)	amended by 62/1982 s 3(8) (Sch Pt 8)	4.11.1982
s 28	inserted by 31/1979 s 5 (Sch 3)	31.5.1979