

South Australia

## West Lakes Development Act 1969

An Act to approve, ratify and give effect to an Indenture made between the State of South Australia, the Minister of Marine and Development Finance Corporation Limited relating to the development of a portion of the State to be known as West Lakes and for matters relating thereto, and for other purposes.

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### Legislative history

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#### The Parliament of South Australia enacts as follows:

##### 1—Short title

This Act may be cited as the *West Lakes Development Act 1969*.

## 2—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 Company* means Development Finance Corporation Limited, a company incorporated in the State of New South Wales whose registered office at the time when the Indenture was made was situated at 16 O'Connell Street, Sydney in that State;

*the Indenture* means the indenture which, together with the Schedules, plans and other annexures annexed thereto and forming part thereof, was made on the Twenty-third day of June, 1969, between the Honourable Raymond Steele Hall, 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 Company of the third part and has been deposited in the General Registry Office at Adelaide bearing No. 647 of 1969; and, where, pursuant to that indenture, 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 section 2 of this Act, includes the first mentioned indenture as so amended by that other agreement or those other agreements;

*the Minister* means the corporation sole whose corporate name is Minister of Marine;

*the previous Indenture* means the Indenture made on the eleventh day of April, 1968, between the Honourable Donald Allan Dunstan, Premier of the State of South Australia for and on behalf of the State, the Minister, The South Australian Housing Trust and the Company and referred to in the Indenture as defined in this subsection.

- (1a) For the purposes of the Indenture, and without limiting the generality of the scheme referred to in recital (4) of the Indenture, the scheme shall be deemed to include—
- (a) the excavation of the Basin, referred to in paragraph 25 of the Fourth Schedule to the Indenture, of impounded water to form a lake, the reclamation of land adjacent thereto and the development of parcels of land within West Lakes for residential, shopping, commercial, industrial, recreational or institutional development or for any number of such types of development; and
  - (b) the flushing of the Basin with seawater as provided in that Schedule and the provision of bank protection along its shores; and
  - (c) the entry of seawater into the Basin by way of the Water Conduit referred to in that Schedule and constructed into Gulf St. Vincent and by way of the Head Works referred to therein which will be located at or towards the southern end of the Basin; and
  - (d) provision for handling External Stormwater Drainage referred to in that Schedule which enters West Lakes from land outside West Lakes; and
  - (e) the provision within West Lakes of roads, bridges, Internal Stormwater Drainage referred to in that Schedule and water and sewerage services in accordance with the Indenture and this Act; and

- (f) the laying out of certain roads, streets, vehicle parking areas and thoroughfares and the creation of allotments of land and their subsequent use as the Corporation within the meaning of the Indenture shall, subject to the Indenture and this Act, from time to time think necessary or desirable.
- (2) Where the Indenture that has been deposited in the General Registry Office at Adelaide bearing No. 647 of 1969 has been amended by any subsequent agreement in writing between the Premier and the Corporation as provided in clause 13 of the Indenture, then, notwithstanding anything contained in the *Registration of Deeds Act 1935* or any other Act—
  - (a) the Premier 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 that Indenture; and
  - (b) the Registrar-General of Deeds shall, by endorsement on the outside cover page of that Indenture, indicate that that 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.

### **3—Ratification of the Indenture**

- (1) The Indenture is hereby approved and ratified and, notwithstanding any other Act or law, or any instrument or order made in pursuance of any other Act or law, shall, subject to this Act, be carried out and have effect as if the provisions thereof (including the Schedules, plans and other annexures annexed thereto) were agreed to between the parties thereto and expressly enacted in this Act.
- (2) The previous Indenture is, by operation of this section, rescinded and ceases to be of force or effect notwithstanding that The South Australian Housing Trust is not a party to the Indenture.

### **4—Power of Minister to acquire land**

- (1) For the purpose of giving effect to the Indenture, the Minister shall have power, either by agreement or compulsorily, to acquire or take subject to and in accordance with the *Land Acquisition Act 1969* the whole or any of the lands set out and described in the Second Schedule to the Indenture, or such other land as the Minister shall be required to acquire or may agree to acquire under the Indenture, 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—
  - (a) to enter into and give effect to any agreement with the Minister to sell or to transfer to him; and
  - (b) effectively to convey to him,  
any such estate in any such land.

## 5—Cancellation of mineral leases under the Mining Act

- (1) Notwithstanding anything in the *Mining Act 1930* as amended, or any other Act, upon the commencement of this Act, the mineral leases which are referred to in the Third Schedule to the Indenture, being either mineral leases which have been granted, or applications for mineral leases which have been approved, under that Act, such mineral leases or approvals having been in force immediately before the commencement of this Act, shall, by force of this section, be cancelled and all rights thereunder extinguished.
- (2) Where, upon the commencement of this Act, there are on any land within West Lakes any minerals mined in pursuance of a mineral lease cancelled or right extinguished under this section or any other enactment, or any machinery, plant, equipment or other property which does not belong to the Crown, the owner thereof shall, within two months after the commencement of this Act or such further period as the Minister may in writing allow or have allowed, remove the same from West Lakes, and, if he fails to do so before the expiration of that time or such further period, if any, such minerals, machinery, plant, equipment and property shall, upon the expiration of that period, become the property of the Crown.
- (3) A lessee under a mineral lease cancelled by virtue of subsection (1) of this section and any applicant for a mineral lease whose application has been approved under the *Mining Act 1930*, as amended, but whose rights under that approval have been extinguished by virtue of that subsection shall, subject to this section, be entitled to compensation from the Minister for the cancellation of the lease or the extinction of the right, as the case may be.
- (4) The provisions of the *Compulsory Acquisition of Land Act 1925*, as amended, shall not apply to or in relation to the cancellation of a mineral lease or the extinction of a right under this section.
- (5) The amount of compensation in respect of the cancellation of a mineral lease or the extinction of a right under this section shall be determined—
  - (a) by agreement, whether before or after the commencement of this Act, between the lessee under the mineral lease or the owner of the right and the Minister or the Minister of Mines, or both such Ministers; or
  - (b) by an action for compensation by the lessee or the owner against the Minister as provided by this section; or
  - (c) by a proceeding in a court on the application of the Minister as provided by this section.
- (6) Within two months after the commencement of this Act, a person claiming compensation under this section is required to give the Minister notice of the amount and full particulars of his claim.
- (7) A claimant shall not be at liberty to institute any proceedings for the recovery of the amount of his claim until after the expiration of two months after the giving of the notice under subsection (6) of this section.
- (8) Within twenty-one days after the receipt of the notice of claim by the Minister, the Minister shall—
  - (a) notify the claimant that the Minister admits the claim for compensation and that the compensation claimed will be paid to the claimant; or

- (b) offer the claimant such amount as the Minister thinks reasonable in satisfaction of the claim, and notify the claimant that the amount offered will be paid to him if he accepts the offer; or
  - (c) notify the claimant that the Minister disputes the claim for compensation.
- (9) The claimant must, within twenty-one days after the receipt of the offer, by notice in writing, notify the Minister whether he does or does not accept the offer.
- (10) If the Minister—
  - (a) offers the claimant an amount in satisfaction of the claim and the claimant does not notify the Minister as provided by subsection (9) of this section that he accepts the offer; or
  - (b) notifies the claimant that the Minister disputes the claim for compensation, the claim shall be a disputed claim.
- (11) Where a claim for compensation under this section becomes a disputed claim, an action for compensation may be instituted by the claimant against the Minister in any court having jurisdiction in personal actions up to the amount claimed and subject to this section, the action shall be heard and determined in the same manner as ordinary actions.
- (12) If within one month after a claim for compensation became a disputed claim—
  - (a) it has not been determined by agreement between the Minister and the claimant; and
  - (b) no process in an action for compensation by the claimant against the Minister to determine the claim has been served on the Minister,the Minister may apply to any court in which an action for compensation might be instituted to determine the claim.
- (13) If a person entitled to compensation under this section does not give to the Minister a notice of the amount and full particulars of his claim as required by subsection (6) of this section, the Minister may apply to a court for a determination of the amount of compensation payable.
- (14) The application shall be made to the Supreme Court if the Minister considers the compensation awarded will amount to more than two thousand five hundred dollars, but shall be made to a local court of full jurisdiction if the Minister considers the compensation awarded will not amount to more than two thousand five hundred dollars.
- (15) A court before which any action for compensation under subsection (11) of this section is brought or to which any application under subsection (12) or subsection (13) of this section is made shall, after such notice to such persons as it directs, hear and determine the action or application in such manner as it deems just and proper in the circumstances and may make such order as to costs as it thinks just.
- (16) The determination, of the court shall be final and conclusive and without appeal, and shall be binding on the Minister and all persons having any right to compensation under this section in respect of the mineral lease, whether he was or they were represented before the court at the hearing or not.

- (17) The compensation payable under this section shall be calculated and paid in the following manner:
- (a) there shall be deducted from the gross income derived by the claimant from the exercise of the rights under the lease or from the exercise of the right to the lease in question over the period of five years immediately preceding the first day of July, 1968, the amount of the expenses incurred during that period in deriving such income, and the amount then remaining shall be divided by 1 825, the quotient being the net daily income over, that period; and
  - (b) the net daily income over that period shall be multiplied by the number of days which, but for the cancellation or extinction, as the case may be, the lease or the right to the lease would have run after such cancellation or extinction, without regard being had to the right, if any, of the claimant to a renewal of the lease or the right to the lease; and
  - (c) the amount calculated in accordance with paragraph (b) of this subsection shall, for the purpose only of making any calculation under this paragraph, be deemed to be due and payable in equal monthly instalments, the first of which it so deemed to be payable upon the date of cancellation or extinction, as the case may be, and the subsequent instalments being deemed to be payable at whole monthly intervals thereafter during the period over which the lease or right would have run, but for such cancellation or extinction, without regard being had to the right, if any, of the claimant to a renewal of the lease or of the right to the lease; and, having regard thereto, there shall be calculated actuarially the amount of the net present value of those instalments as at the date of the cancellation or extinction, as the case may be, at an interest rate of one half per centum per month; and
  - (d) the amount of the net present value of those instalments, calculated, with respect to each such lease or right to a lease, in accordance with paragraph (c) of this subsection together with compound interest thereon at the rate of one half per centum for each complete month that has elapsed between the date of cancellation or extinction and the date of payment, shall be the compensation payable in respect of the cancellation of the lease or the extinction of the right by virtue of subsection (1) of this section and that amount shall be paid as soon as practicable after the date of the cancellation or extinction, as the case may be.

## **6—Vesting of bed of Old Port Reach in the Minister**

For the purpose of giving effect to paragraph (c) of clause 5 of the Indenture, and notwithstanding any other Act, the bed of the Old Port Reach (delineated on the Department of Marine and Harbors Drawing 14426/PH2 a copy whereof is annexed to the Indenture and referred to as Plan 1) extending from the Railway Reserve on the South to the Bower Road embankment on the North is, by virtue of this section, vested for an estate in fee simple in the Minister.

## 7—Vesting of certain lands and reserves in the Minister

On the commencement of this Act, the lands, portions of lands and reserves referred to in paragraph (d) of clause 5 of the Indenture shall to the extent that they are not vested for an estate in fee simple in the Minister, and without the payment of any compensation or consideration by the Minister or the corporation, become so vested in the Minister freed of all encumbrances, if any, subject as therein provided.

## 8—Closure of roads and vesting of same and other lands in the Minister

- (1) Notwithstanding the provisions of any other Act and without limiting any other provision of this Act, the Minister may, at any time, and from time to time, at the request of the Corporation, by notice published in the Gazette close such roads within West Lakes as shall not be required as roads for the implementation of the scheme referred to in paragraph (e) of clause 5 of the Indenture.
- (2) Upon the closure of those roads the land that comprised the roads shall, without the payment by the Minister of any compensation or consideration therefor, vest in the Minister for an estate in fee simple freed from all encumbrances, if any.
- (3) On the commencement of this Act, all lands referred to in paragraph (e) of clause 5 of the Indenture, not being land referred to in subsection (2) of this section and excepting lands specifically excepted by that paragraph and also excepting any land that is the subject of a licence to obtain, take away and stack sand granted by the Minister of Lands pursuant to the *Crown Lands Act 1929*, as amended, shall be vested in the Minister for an estate in fee simple freed from all encumbrances, if any, and in the case of land vested before the commencement of this Act in The Corporation of the City of Woodville, such vesting in the Minister shall be without the payment of any compensation or consideration by the Minister or the Corporation within the meaning of the Indenture.
- (4) The Minister of Lands may, by notice published in the Gazette, declare that any licence referred to in subsection (3) of this section has expired or has been cancelled and, upon the day on which the notice is published in the Gazette, the land which was the subject of that licence shall become vested in the Minister as defined in subsection (1) of section 2 of this Act for an estate in fee simple freed from all encumbrances.
- (5) When land has become vested in the Minister by virtue of this section—
  - (a) the Registrar-General of Deeds 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 of Deeds, in any case where an application is made under this subsection, the Minister shall furnish the Registrar-General with a plan of the land to which the application relates certified by a licensed surveyor.

## 9—Provisions for bringing land within West Lakes 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 West Lakes that is not under the *Real Property Act 1886*, as amended; or
- (c) any land within West Lakes 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 of Deeds 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.

## 10—Revesting of land in the Minister in certain cases

- (1) Subject to subsection (2) of this section, where—
  - (a) pursuant to the Indenture any allotment, within the meaning of the *Real Property Act 1886* of land within West Lakes has been transferred to the Corporation; and
  - (b) the allotment of land—
    - (i) has not been disposed of by the Corporation; or
    - (ii) has had no completed buildings to the value of or exceeding three thousand dollars erected thereon by or on behalf of the Corporation; or
    - (iii) has had no work of the value of or exceeding three thousand dollars done thereon by or on behalf of the Corporation,

such allotment shall, if the Corporation does not, within fourteen days after receiving a request in writing from the Minister so to do, transfer to the Minister an estate in fee simple in such allotment or satisfy the Minister that the scheme and development referred to in paragraph (h) of clause 5 of the Indenture will be proceeded with within a reasonable time, on the publication in the Gazette of a notice under the seal of the Minister, vest for an estate in fee simple in the Minister without the payment of any compensation by the Minister.



- (2) The Minister shall not cause to be published in the Gazette the notice referred to in subsection (1) of this section if the Minister has notified the Corporation that the Minister is not satisfied that the scheme and development referred to in subsection (1) of this section will be proceeded with within a reasonable time and the Corporation has notified the Minister in writing that the Minister should have been so satisfied, or in the event of either the Minister notifying the Corporation or the Corporation notifying the Minister of any question arising as to what is a reasonable time, unless the Minister and the Corporation have reached agreement on the matter or matters in dispute, or the matter or matters in dispute has or have been determined by arbitration in accordance with the arbitration clause.

### **11—Revesting of undisposed of land on liquidation of the Corporation**

Where the Minister is satisfied that the Corporation is in the process of liquidation for any purpose other than for the amalgamation or reconstruction of the Corporation as approved by the Minister, any such allotment of land transferred by the Minister to the Corporation in pursuance of the Indenture as has not been built upon or disposed of by or on behalf of the Corporation shall, on the publication in the Gazette of a notice under the seal of the Minister, vest for an estate in fee simple in the Minister without the payment of any compensation by the Minister.

### **12—Adjustment of titles to certain lands**

- (1) On and after the commencement of this Act, all lands referred to in paragraph (j) of clause 5 of the Indenture as "the abutting lands" having prior to the making of the Indenture any bound or boundary extending to the bank or ordinary high water mark or the middle of the stream, or partly extending to one or more of them, of the Upper Port Reach of the Port River shall, notwithstanding that any or every such bound or boundary did then extend thereto, have as their respective areas, bounds and extent only such areas, bounds and extent as in fact they respectively had on the twenty-third day of June, 1969, and, for the purpose of giving effect to the foregoing provisions of this section, upon application to the appropriate authority by the registered proprietor of any such land, a new or amended Land Grant or certificate of title under the provisions of the *Real Property Act 1886*, as amended, shall be issued in lieu of the Land Grant or certificate of title then existing in respect thereof under that Act.
- (2) Notwithstanding subsection (1) of this section, the Corporation shall not for three months after the commencement of this Act, except with the approval of the Minister, do or cause to be done any act, matter or thing to alter or vary any bank or the bed of the stream of the Upper Port Reach of the Port River.
- (3) The Minister shall bear the costs and expenses (including the cost of necessary surveys, maps and plans) of ascertaining the respective areas, bounds and extent of each and all of the abutting lands for the purpose of giving full effect to this section and of issuing new or amended Land Grants or certificates of title under the *Real Property Act 1886*, as amended, in respect of the abutting lands.

- (4) The power conferred by section 4 of this Act on the Minister, either by agreement or compulsorily, to acquire or take land for the purpose of giving effect to the Indenture is hereby expressly extended to and in relation to any portion of the abutting lands referred to in paragraph (j) of clause 5 of the Indenture for the purpose of ensuring that the provisions of that paragraph are given full effect and any land which, prior to being acquired under this Act by the Minister, formed part of the abutting lands shall, upon such acquisition, become and form part of the additional lands within the meaning of the Indenture.

#### **12A—Construction of clause 5(k) of the Indenture**

Paragraph (k) of clause 5 of the Indenture shall be read and construed as if the passage "known as the Port Reach" at the end thereof were omitted therefrom.

#### **12B—Construction of clause 11 of the Indenture**

Clause 11 of the Indenture shall be read and construed as if, after the word "scheme", the following passage were inserted: ", including the provision of such roads, streets, vehicle parking areas and thoroughfares and such works within West Lakes as the Corporation may, from time to time, think fit to provide for the amenity (including the future amenity) of West Lakes and all things necessary for the implementation and carrying out of the scheme".

#### **13—Corporation may divert or alter water courses and banks**

Subject to section 12 of this Act, the Corporation may, without being liable in any way for the payment of compensation or damages arising therefrom, divert, change, remove, alter, re-channel and, without derogating from the particularity of the foregoing powers, vary in any way the water courses and the banks and the course of the flow of water, or do either or both of those things, or vary or alter the bounds thereof within West Lakes known as the Port Reach.

#### **14—Power to add to West Lakes**

- (1) Notwithstanding anything in the Indenture or this Act, where the Corporation becomes the proprietor of an estate in fee simple in any parcel of land not within, but in the vicinity of, West Lakes as defined in clause 16 of the Indenture—
- (a) that parcel of land shall, upon publication in the Gazette by the Minister of a notice signifying that, for the purposes of this section, he approves of the parcel being included within West Lakes, be deemed to be included within West Lakes; and
  - (b) without any further act or thing being done, and notwithstanding anything contained in this Act or the Indenture, upon publication in the Gazette by the Minister of the notice referred to in paragraph (a) of this section, the definition of *West Lakes* contained in clause 16 of the Indenture shall be deemed to be amended so that, and shall for all purposes thereafter be read and construed as if, the bounds of that parcel of land were included therein, and the Map and legend constituting the First Schedule to the regulations contained in the Fifth Schedule to the Indenture shall be deemed to be amended so that, and shall for all purposes thereafter be read and construed as if, the boundary of West Lakes as depicted thereon were extended to include that parcel of land within West Lakes.

- (2) As soon as practicable after the publication in the Gazette of a notice referred to in subsection (1) of this section, whether that publication was made before or after the commencement of the *West Lakes Development Act Amendment Act 1970*—
  - (a) the Minister shall send the Registrar-General a copy of the notice; and
  - (b) the Corporation shall deposit in the General Registry Office at Adelaide a revised Map and legend approved by the Minister which shall depict the boundary of West Lakes extended to include the parcel of land referred to in subsection (1) of this section and the Corporation shall at the same time inform the Registrar-General in writing that such revised Map and legend depict the boundary of West Lakes as so extended.
- (3) Upon the deposit of the revised Map and legend as provided by subsection (2) of this section, the Registrar-General shall assign a General Registry Office number thereto and shall, by endorsement on the outside cover page of the Indenture, indicate that the Indenture has been amended in pursuance of the notice and that the revised Map and legend, which shall be referred to by that number, has been deposited in the General Registry Office whereupon the revised Map and legend shall be deemed to be substituted for the Map and legend constituting the First Schedule to the regulations contained in the Fifth Schedule to the Indenture and for every such previously substituted revised Map and legend.
- (4) Notwithstanding anything contained in this Act or the Indenture, on and after the commencement of the *West Lakes Development Act Amendment Act 1970* without any further act or thing being done, the definition of **West Lakes** contained in clause 16 of the Indenture shall be deemed to be amended so that, and shall for all purposes thereafter be read and construed as if, all the land delineated in red on the Revised Map and legend of West Lakes deposited in the General Registry Office at Adelaide bearing No. 1113 of 1970 were included in West Lakes and the Map and legend constituting the First Schedule to the regulations contained in the Fifth Schedule to the Indenture shall be deemed to be amended so that, and shall for all purposes thereafter be read and construed as if, the boundary of West Lakes as depicted thereon were extended to include all the land delineated in red on that revised Map and legend.
- (5) On the commencement of the *West Lakes Development Act Amendment Act 1970* the Registrar-General shall by endorsement on the outside cover page of the Indenture, indicate that the Indenture has been amended by operation of this Act as amended by the *West Lakes Development Act Amendment Act 1970* and that the revised Map and legend, which shall be referred to by its General Registry Office number, has been deposited in the General Registry Office whereupon the revised Map and legend shall be deemed to be substituted for the Map and legend constituting the First Schedule to the regulations contained in the Fifth Schedule to the Indenture.

#### **15—Fourth Schedule to the Indenture to have effect as if expressly enacted in this Act**

- (1) Subject to this section, the provisions of the Fourth Schedule to the Indenture shall apply and have effect for the purposes of giving effect to the Indenture as if the provisions of that Schedule were expressly enacted in this Act.

- (2) Without limiting the generality of the application and effect of subsection (1) of this section, during the carrying on of the major works referred to in the Indenture no person shall in any legal proceedings be entitled to any order or decree by way of injunction prohibiting the carrying on or carrying out of such works or any part thereof on any ground or grounds arising from or associated with any stench, odour or pollution resulting from the carrying out of the major works or any part thereof.
- (3) Subparagraph (1) of paragraph 3 of the Fourth Schedule to the Indenture shall be read and construed as if each sum of money paid by the Corporation, with the approval of the Minister, to any person having an interest in any mineral lease or any application for a mineral lease referred to in the Third Schedule were paid by the Corporation to the Minister under and in accordance with that subparagraph.
- (3a) Paragraph 4 of the Fourth Schedule to the Indenture shall be read and construed as if the word "or" thirdly occurring therein were struck out and the word "to" were inserted in lieu thereof.
- (3b) Paragraph 6 of the Fourth Schedule to the Indenture shall be read and construed as if—
- (a) the word "All" in subparagraph (2) thereof were struck out and the passage "Subject to the *West Lakes Development Act 1969*, as amended, and anything appearing elsewhere in this Indenture, all" were inserted in lieu thereof; and
  - (b) after the passage "usually carried out" in subparagraph (2) thereof there were inserted the passage "pursuant to the Planning Act"; and
  - (c) the passage "in accordance with such requirements" in subparagraph (2) thereof were struck out and the passage "to the standards of those requirements and, if any dispute arises between the Corporation and any such Council as to those standards or requirements or any of them, either party may, after giving notice in writing to the other party, refer the question in dispute to arbitration in accordance with the arbitration clause and the decision of the arbitrator on such question shall be binding upon both the Corporation and the Council" were inserted in lieu thereof.
- (3c) Paragraph 13 of the Fourth Schedule to the Indenture shall be read and construed as if the passage commencing with the words "as determined" in the fourth line thereof and ending with the words "for the purposes of this paragraph" in the seventeenth line thereof were struck out and the passage "which have been determined by a committee consisting of Messrs. H.J.M. Hodgson, M.A. Kinnaird, C.W. Bonython and J.J. Vreugdenhill" were inserted in lieu thereof.
- (4) For the purposes of paragraph 15 of the Fourth Schedule to the Indenture—
- (a) where any estate in fee simple or lesser estate in the said lands as defined in the Indenture is vested in the Minister, the Minister, shall not transfer such estate to The Grange Golf Club Incorporated without the consent of the Corporation; and
  - (b) any amendment to the boundaries of West Lakes and any adjustment of the said lands necessitated by the provisions of that paragraph shall be made and have effect as if such amendment and adjustment were required to be made under this Act; and

- (c) the Corporation shall not be liable to pay any duty, tax or fee prescribed by or under any Act in respect of any such amendment or adjustment.
- (4a) Paragraph 16 of the Fourth Schedule to the Indenture shall be read and construed as if—
- (a) the passage commencing with the words "developing an horsepower" in the fifteenth line thereof and ending with the words "in all" in the twentieth line thereof were struck out; and
  - (b) the passage "8 knots" were struck out and the passage "5 knots" were inserted in lieu thereof; and
  - (c) after the passage "West Lakes" lastly occurring therein there were inserted the passage "except in such areas and at such times as may be from time to time prescribed by the council".
- (5) For the purposes of paragraph 16 of the Fourth Schedule to the Indenture, and subject thereto, any council to which that paragraph refers shall have power to make by-laws to give effect to the provisions of that paragraph within the area of the council as constituted before or after the commencement of this Act, to make provision for matters incidental or ancillary thereto, and to provide for the payment of a penalty not exceeding one hundred dollars for the breach of any such by-law.
- (6) For the purposes of paragraph 17 of the Fourth Schedule to the Indenture, until the final completion of the major works the Corporation shall determine the frequency of change of the volume of water through any portion of the major works, and—
- (a) until the Minister has accepted responsibility for the Head Works referred to in paragraph 25 of the Fourth Schedule to the Indenture, the Corporation shall be responsible for changing the volume of water through any portion of such works as determined under paragraph 17 of that Schedule; and
  - (b) after the Minister has accepted responsibility for the Head Works, the Minister or such other person or authority as is referred to in paragraph 10 or paragraph 11, as the case may require, of that Schedule shall be responsible for changing the volume of water through any portion of such works as determined under paragraph 17 of that Schedule.
- (7) For the purposes of this Act and in particular of paragraph 18 of the Fourth Schedule to the Indenture—
- (a) any reference therein to the area of a council shall be construed as the area of the council for the time being as constituted before or after the commencement of this Act; and
  - (b) any reference to Audrey Terrace shall be construed as including a reference to Audrey Street.
- (7a) Paragraph 18 of the Fourth Schedule to the Indenture shall be read and construed as if the passage "as depicted upon the said Plan 2" were struck out and the passage "and to, in, over and under any one or more other roads or thoroughfares whether presently or hereafter existing either within West Lakes or between West Lakes or any part of it and the sea coast of Gulf St. Vincent," were inserted in lieu thereof.

- (8) For the purposes of paragraph 21 of the Fourth Schedule to the Indenture—
- (a) the Corporation may, with the consent of the Minister and subject to such conditions, if any, as the Minister may from time to time determine, by resolution—
    - (i) regulate or prohibit the entry into or egress from any portion of West Lakes; and
    - (ii) regulate the activities of any person within West Lakes, until the final completion of the major works; and
  - (b) a copy of such resolution shall as soon as practicable after it is made be published in the Gazette; and
  - (c) a person who contravenes or fails to comply with a resolution made under this subsection a copy of which has been so published shall be guilty of an offence and, on conviction by a court of summary jurisdiction, shall be liable to a penalty not exceeding one hundred dollars.
- (9) The provisions of paragraph 22 of the Fourth Schedule to the Indenture shall apply and have effect notwithstanding anything to the contrary contained or implied in the *Land Tax Act 1936*, as amended, the *Waterworks Act 1932*, as amended, or the *Sewerage Act 1929*, as amended.
- (10) The provisions of paragraph 23 of the Fourth Schedule to the Indenture shall apply and have effect notwithstanding anything to the contrary contained or implied in the *Local Government Act 1934*, as amended.
- (11) Notwithstanding anything contained in any other enactment, the provisions of paragraph 24 of the Fourth Schedule to the Indenture shall bind the Minister of Works and the corporation and all other persons to whom that paragraph expressly or by implication relates, as if they were parties to the Indenture, and notwithstanding that they are also persons bound by this Act, and power is hereby conferred on the Minister of Works, the Corporation and all such other persons to do such things as are expressly or by implication authorised or required to be done by him or them thereby or thereunder and the *Waterworks Act 1932*, as amended, and the *Sewerage Act 1929*, as amended, shall, for the purposes of the Indenture, be read and construed as if the provisions thereof were modified or varied to the extent necessary to give effect to this Act.
- (11a) Paragraph 25 of the Fourth Schedule to the Indenture shall be read and construed as if—
- (a) the passage "The width of the Basin will vary throughout its length but will average about 800 feet in width." were struck out from subparagraph (a) thereof; and
  - (b) the passage "20 feet" were struck out from the sixteenth line of subparagraph (d) thereof and the passage "50 feet" were inserted in lieu thereof; and
  - (c) after the passage "normal level of the water" in the seventeenth line of subparagraph (d) thereof there were inserted the passage "to enable, among other things, beaches to be provided where thought fit by the Corporation"; and

- (d) the passage "Sufficient bridges will be provided across the Basin where and when reasonably required." were struck out from subparagraph (d) thereof and the passage "Bridges will be provided across the Basin as specified in the General Arrangement Design and drawings." were inserted in lieu thereof.
- (12) For the purposes of paragraph 25 of the Fourth Schedule to the Indenture, power is hereby conferred on the Corporation to do all such things as are necessary to carry out the major works both within and outside West Lakes in accordance with the provisions of this Act.
- (12a) Paragraph 26 of the Fourth Schedule to the Indenture shall be read and construed as if—
  - (a) the passage "and shall be designed and constructed in accordance with the requirements of such municipality in which that part of West Lakes lies and of the Commissioner of Highways." were struck out from subparagraph (3) and the following passage were inserted in lieu thereof: "and shall be designed and constructed to such requirements by way of engineering designs and specifications as may be agreed between the Corporation, such municipality in which that part of West Lakes lies and the Commissioner of Highways, having regard to recognised engineering design practice, efficiency and economy. In the event of the Corporation, the municipality and the Commissioner of Highways or any number of them failing to agree as to such requirements or any of them within six weeks after the Corporation, by notice in writing given by it to the other parties, requires the parties to set out their respective requirements in respect of the works or any nominated part thereof, the Commissioner of Highways shall determine the requirements in accordance with which those works or that part of those works shall be designed and constructed and his decision shall be binding on the Commissioner of Highways, the Corporation and the municipality."; and
  - (b) the passage "The Corporation of the City of Port Adelaide and The Corporation of the Town of Henley and Grange," were struck out from subparagraph (9) and the passage "and The Corporation of the City of Henley and Grange" were inserted in lieu thereof; and
  - (c) at the end of subparagraph (9) thereof there were inserted the following passage: "Notwithstanding anything elsewhere in this Indenture provided for, the total contribution to the costs of External Drainage Works to be borne by The Corporation of the City of Henley and Grange shall not exceed seventeen thousand dollars.";
- (13) For the purposes of paragraph 26 of the Fourth Schedule to the Indenture—
  - (a) power is hereby conferred on the Corporation to do all such things as the Corporation is required to do to give effect to that paragraph; and
  - (b) subparagraphs (5) to (10) (inclusive) thereof shall have effect as if the provisions thereof have been agreed to by and are binding on The Corporation of the City of Woodville, The Corporation of the Town of Henley and Grange, The Corporation of the City of Port Adelaide, the Commissioner of Highways and the Corporation, and as if they were, and had full power and authority to become, parties to and to become bound by the Indenture.

- (14) For the purpose of giving effect to paragraph 28 of the Fourth Schedule to the Indenture it is hereby enacted that, notwithstanding the provisions of the *Real Property Act 1886*, as amended, this Act shall apply to land subject to the provisions of that Act.
- (14a) Paragraph 29 of the Fourth Schedule to the Indenture shall be read and construed as if the passage "Reduced Level Datum, as at the 21st day of May 1969, or used" were struck out and the passage "Port Adelaide Datum defined" were inserted in lieu thereof.
- (15) The provisions of paragraph 30 of the Fourth Schedule to the Indenture shall apply and have effect notwithstanding anything to the contrary or inconsistent therewith contained or implied in the *Stamp Duties Act 1923*, as amended.
- (16) For the purposes of paragraph 1 of the Fourth Schedule to the Indenture, the Fifth Schedule to the Indenture shall be taken to be the Schedule in the Indenture erroneously bearing the heading "THE FIFTH SCHEDULE TO THE WEST LAKES REGULATIONS" which heading it hereby amended to read as follows:
- "THE FIFTH SCHEDULE".
- (17) Notwithstanding anything contained in the *Planning Act 1982* or the *Real Property Act 1886* no consent or approval for the division of land within West Lakes shall be refused under either of those Acts on the ground that the land shown thereon, or any part thereof, is liable to inundation by tidal, drainage or flood waters or by reason of any proposed allotment shown thereon having at any of its boundaries the bank of the Basin referred to in paragraph 25 of the Fourth Schedule to the Indenture or the bank of the Upper Port Reach of the Port River.

### **15A—Corporation's road making responsibility limited**

- (1) Notwithstanding anything contained in any other Act or law the Corporation within the meaning of the Indenture 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 existing or proposed road or street within West Lakes to a width in excess of thirty-two feet and shall not be required to pave any 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.
- (2) If any dispute arises between the Corporation and any municipal council 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 the arbitration clause and the decision of the arbitrator on that question shall be binding upon both the Corporation and the council.

### **15B—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 and as occasion requires, appoint such persons as he thinks fit to be authorised persons for the purposes of this section.



- (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 resolution referred to in subsection (8) 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 one hundred dollars.

## **16—Regulations**

- (1) Subject to this section and to paragraph 1 of the Fourth Schedule to the Indenture the Minister may, by regulation published in the Gazette, from time to time, add to, vary or revoke the regulations and the Schedules thereto which together are entitled "WEST LAKES REGULATIONS" contained in the Fifth Schedule to the Indenture, or any of them.
- (2) The regulations entitled "WEST LAKES REGULATIONS" contained in the Fifth Schedule to the Indenture shall (together with the Schedules thereto), for all purposes, be, and be deemed to be, regulations made under this Act and each such regulation and Schedule shall, upon the commencement of this Act, have force and effect unless and until it is expressly, and not by implication or by general rule of law, revoked or varied as provided in this Act.
- (3) This Act and the regulations under this Act shall have effect notwithstanding any inconsistency with the *Planning Act 1982* or Part 19AB of the *Real Property Act 1886*.

- (4) No regulation adding to, varying or revoking the regulations contained in the Fifth Schedule to the Indenture shall be published in the Gazette by the Minister or have effect before the final completion of the major works or before the Indenture ceases to have effect (whichever first occurs) except with the consent in writing of the Corporation: but if the Corporation, in the opinion of the Minister, unreasonably withholds its consent to any regulation adding to, varying or revoking the regulations contained in the Fifth Schedule to the Indenture, the Minister may refer the matter to arbitration under the arbitration clause as if the matter were one which he may refer to arbitration under the Indenture.
- (5) A regulation made under this section shall take effect on the day of publication thereof in the Gazette or such later day as may be fixed by the same or any other regulation that may be made under this section.
- (6) At any time before the final completion of the major works or before the Indenture ceases to have effect (whichever first occurs) the Corporation may propose in writing to the Minister that any of the regulations (including any Schedule thereto) contained in the Fifth Schedule to the Indenture should be revoked or varied or that new regulations or Schedules be added thereto.
- (7) The Minister shall, within two months after the receipt of the proposal from the Corporation notify the Corporation in writing whether or not the Minister agrees to the proposal in whole or in part.
- (8) If the Minister notifies the Corporation of his disapproval of the proposal in whole or in part, the matter or matters of which he disapproves shall be the subject of negotiation between the Minister and the Corporation and, in the event of such negotiation failing to bring about agreement between the Minister and the Corporation within two months after the Minister's disapproval has been so notified to the Corporation, or within such further time as the Minister and the Corporation may from time to time agree, the Corporation may refer the matter or matters of which the Minister disapproves to arbitration under the arbitration clause.
- (9) Without limiting the application of any other provision of the *Acts Interpretation Act 1915* section 38 of that Act shall not apply to or in relation to any regulation made under this Act.

### **16A—Right of appeal**

- (1) An applicant for consent, permission or approval under the West Lakes Regulations contained in the Fifth Schedule to the Indenture who is aggrieved by a decision to refuse consent, permission or approval or to grant consent, permission or approval subject to conditions may appeal to the Planning Appeal Tribunal against the decision and the Tribunal shall have jurisdiction to hear and determine every such appeal as if it were an appeal under the *Planning Act 1982*.
- (2) The provisions of the *Planning Act 1982* and the rules under that Act shall govern the practice and procedure of the Tribunal upon an appeal under this section.

## 17—Legal proceedings

- (1) Notwithstanding anything to the contrary in any other Act or law, the State may, in the name of "The State of South Australia" or, as the case may require, the Minister or the Minister of Works may—
  - (a) sue and be sued and be or be joined as a party to legal proceedings in connection with any matter arising out of or relating to this Act or the Indenture; and
  - (b) agree with any person to submit any dispute or matter arising out of or relating to the Indenture or this Act to arbitration as provided in the Indenture; and
  - (c) be a party to any such arbitration.
- (2) Without in any way limiting the powers, rights, liabilities, duties and obligations of the Minister or the Minister of Works under this Act or any other Act, in any legal proceedings or arbitration to which the State is a party under subsection (1) of this section, the practice and procedure and the rights, duties and obligations of the parties shall, as nearly as may be possible, be the same, and judgment may be given and costs awarded as in legal proceedings or an arbitration between subject and subject.
- (3) The Treasurer shall out of money provided by Parliament for the purpose satisfy any award, order or judgment for the payment of money made or given against the State in any such proceedings or arbitration.

## 18—West Lakes Loan Account

Upon the commencement of this Act, the Treasurer shall—

- (a) debit an account at the Treasury to be known as the "West Lakes Loan Account" with the amount of one million and sixty-one thousand dollars; and
- (b) credit the account at the Treasury known as the South Australian Housing Trust Loan Account with the whole amount of the cost (including all interest brought to account thereon) incurred before the commencement of this Act by the South Australian Housing Trust in respect of all land within West Lakes which was owned by the Trust immediately before such commencement; and
- (c) credit the accounts at the Treasury known as—
  - (a) Harbors Accommodation Loan Account;
  - (b) Crown Lands—Leasehold Land and Improvements, etc., Loan Account,

with the amounts outstanding within those accounts in respect of any lands which form part of the said lands as referred to in the Indenture; and

- (d) credit the Consolidated Revenue Account at the Treasury, in redemption of deficits which had accrued therein prior to the first day of July, 1969, and which remain unfunded, with the difference between one million and sixty-one thousand dollars and all credits pursuant to paragraphs (b) and (c) of this section.

### **19—Liability of Corporation under clause 7 of Indenture**

Where, pursuant to clause 7 of the Indenture, the Corporation declines to proceed with the scheme as provided in that clause, the Corporation shall be liable under that clause to fill up only such pits and excavations as had been made on the said lands or any part thereof by the Corporation or on its behalf and to replace the surface soil and restore the parts of the said lands which had been built upon, worked upon or otherwise used by or on behalf of the Corporation, unless otherwise agreed between the Minister and the Corporation.

## 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](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1969	46	<i>West Lakes Development Act 1969</i>	20.11.1969	20.11.1969
1970	60	<i>West Lakes Development Act Amendment Act 1970</i>	10.12.1970	10.12.1970
1982	62	<i>Statutes Amendment (Planning) Act 1982</i>	1.7.1982	4.11.1982 ( <i>Gazette 4.11.1982 p1304</i> )

### Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 11 of The Public General Acts of South Australia 1837-1975 at page 478.

New entries appear in bold.

Provision	How varied	Commencement
s 10		
s 10(1)	amended by 62/1982 s 3(14) (Sch Pt 14)	4.11.1982
s 15		
s 15(17)	amended by 62/1982 s 3(14) (Sch Pt 14)	4.11.1982
s 15A	amended by 62/1982 s 3(14) (Sch Pt 14)	4.11.1982
s 16		
s 16(3)	substituted by 62/1982 s 3(14) (Sch Pt 14)	4.11.1982
s 16A	substituted by 62/1982 s 3(14) (Sch Pt 14)	4.11.1982