

South Australia



HINDMARSH ISLAND BRIDGE ACT 1999

No. 82 of 1999

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ELIZABETHAE II REGINAE

A.D. 1999

No. 82 of 1999

An Act to ensure payment to the Crown of certain amounts on account of the construction of a bridge between Goolwa and Hindmarsh Island; and for other purposes.

[Assented to 2 December 1999]

The Parliament of South Australia enacts as follows:

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the *Hindmarsh Island Bridge Act 1999*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Preliminary

3. (1) In this Act, unless the contrary intention appears—

"allotment" means an allotment within the meaning of the Tripartite Deed;

"Binalong area" has the same meaning as in the Tripartite Deed;

"Council" means the Alexandrina Council;

"Hindmarsh Island bridge" means the bridge referred to in the Tripartite Deed;

"owner" of an allotment in relation to a relevant period is the person or persons who are liable to the Council for general rates under the *Local Government Act 1934* in respect of the allotment for the financial year corresponding to that period;

"relevant allotment" means an allotment situated on Hindmarsh Island that must be taken into account for the purposes of the formula set out in clause 9.3 of the Tripartite Deed;

"relevant period" means a period of 12 months ending immediately before any 1 June that is relevant to the determination of any amount payable under the terms of clause 9 of the Tripartite Deed;

"Tripartite Deed" means the deed dated 31 March 1993 between the Minister of Transport Development (now the Minister for Transport and Urban Planning) and the District Council of Port Elliot and Goolwa (now Alexandrina Council) and Binalong Pty. Ltd. (A.C.N. 007 620 439) (a copy of which is set out in the schedule);

"Works" has the same meaning as in the Tripartite Deed.

(2) For the purposes of this Act, the financial year that corresponds to a relevant period is the financial year that ends at the end of the month of June immediately following the end of the relevant period.

(3) For the avoidance of doubt, the Tripartite Deed will be taken to be valid and enforceable for the purposes of references in this Act to the Tripartite Deed.

(4) A reference to the Minister in the Tripartite Deed is a reference to the Minister to whom the administration of this Act is committed.

(5) For the purposes of this Act and the operation of the Tripartite Deed, 28 September 1993 will be taken to be the date on which the Minister accepted, pursuant to the Tender Specification, the successful tenderer's tender for the completion of the Works.

PART 2
CONTRIBUTIONS TOWARDS COST OF BRIDGE

Owners of new allotments on Hindmarsh Island to pay contributions towards cost of bridge

4. (1) The owner of a relevant allotment is liable to pay to the Crown in respect of each relevant period an amount equal to the amount that the Council is liable to pay to the Minister with respect to that allotment under the terms of clause 9 of the Tripartite Deed.

(2) For the purposes of subsection (1), the amount of a payment with respect to an allotment will be determined assuming "C" in the formula set out in clause 9.3.2 of the Tripartite Deed is the CPI Number for the quarter ended on 31 March 2000.

(3) An amount payable under subsection (1) with respect to a relevant period must be paid by the owner of the relevant allotment to the Council in conjunction with the payment of general rates under the *Local Government Act 1934* on land comprising the allotment for the financial year corresponding with the relevant period.

(4) The Council must, after consultation with the Minister, give notice of an amount payable under this section with respect to a relevant allotment to the person who is the principal ratepayer for the land comprising the allotment for the purposes of the *Local Government Act 1934*.

(5) A notice under subsection (4) must be in a form approved or determined by the Minister and served as part of a rates notice for general rates payable under the *Local Government Act 1934* or, with the approval of the Minister, as a separate notice.

(6) The service of a notice under subsection (5) in accordance with the provisions of the *Local Government Act 1934* for the service of notices is sufficient for the purposes of giving notice to the owner of a relevant allotment of an amount payable under this section in respect of the allotment.

(7) An amount payable under this section in respect of a relevant allotment for a relevant period is payable to the Council—

- (a) unless paragraph (b) applies—on the day on which general rates on the land comprising the allotment for the corresponding financial year are payable to the Council under the *Local Government Act 1934*;
- (b) if general rates on the land comprising the allotment for the corresponding financial year are payable in two or more instalments—on the day on which the first instalment of those rates is payable to the Council under the *Local Government Act 1934*.

Council to pay amounts to Crown

5. (1) An amount equal to the aggregate of the amounts payable to the Crown under section 4 in respect of a relevant period must be paid by the Council to the Crown on or before 31 January in the year immediately following the end of that relevant period (without deduction for costs incurred by the Council in collecting amounts from the owners of relevant allotments under this Part or in otherwise complying with the requirements of this Part).

(2) However, if the Council fails to make a full payment under subsection (1) in a particular year as a consequence of owners of relevant allotments failing to make appropriate payments under section 4 for the relevant period, the Minister must not institute proceedings against the Council to recover the amount of the deficiency until after the fourth anniversary of the 31 January by which payment was due.

(3) The Council is entitled to recover any amount that the owner of a relevant allotment has failed to pay in accordance with the requirements of section 4 in respect of a relevant period and such an amount is a charge on the land in relation to which the amount is payable and may be recovered by the Council as if the amount were unpaid rates in arrears under the *Local Government Act 1934*.

Lump sum payments

6. (1) If the owner of a relevant allotment elects to pay a lump sum of \$4,500 in respect of the allotment, then the liability to make further payments under section 4 in respect of that allotment ceases.

(2) An amount received by the Council under subsection (1) must be paid by the Council to the Crown within 30 days after its receipt by the Council.

Periods over which payment to be made

7. (1) The period for which payments are required under sections 4 and 5 conclude—

- (a) in the case of payments that relate to an allotment in the Binalong area—at the time when an amount equal to the Binalong debt has been paid by the Council to the Crown under sections 5 and 6;
- (b) in the case of payments that relate to an allotment outside the Binalong area—at the time when an amount equal to the Debt under the Tripartite Deed (including the Binalong debt) has been paid by the Council to the Crown under sections 5 and 6,

(and in any event no payment need be made in respect of a period falling after the 20th anniversary of the date of practical completion of the Works).

(2) For the purposes of subsection (1)—

- (a) in respect of the operation of subsection (1)(a)—the Binalong debt is an amount equal to the Debt under the Tripartite Deed, compounded pursuant to clause 7 of the Tripartite Deed but —
 - (i) assuming construction costs of \$5 040 350; and
 - (ii) assuming accrual of the construction costs on a uniform basis (beginning from zero) over the prescribed period; and
 - (iii) assuming for the purposes of variable "n" in clause 7.2 of the Tripartite Deed that the first quarter is the quarter commencing on 1 January 1999; and
 - (iv) assuming the non-application of clauses 7.3.3 and 7.3.5 of the Tripartite Deed;
- (b) in respect of the operation of subsection (1)(b)—the Debt under the Tripartite Deed will be calculated—
 - (i) by compounding the Debt pursuant to clause 7 of the Tripartite Deed; and
 - (ii) assuming accrual of the construction costs within the meaning of the Tripartite Deed on a uniform basis (beginning from zero) over the prescribed period; and

- (iii) assuming for the purposes of variable "n" in clause 7.2 of the Tripartite Deed that the first quarter is the quarter commencing on 1 January 1999; and
- (iv) assuming the non-application of clauses 7.3.3 and 7.3.5 of the Tripartite Deed,

(and the Tripartite Deed will be taken to have been varied accordingly).

(3) For the purposes of subsection (2), the prescribed period is a period beginning on a date determined by the Minister by notice in the *Gazette* to be the date on which work on the construction of the Hindmarsh Island bridge is to be taken to have commenced (being a date preceding the date of the notice) and ending on the date of practical completion of the Works.

Reduction of Council liability

8. The liability of the Council to make a payment to the Minister under clause 9 of the Tripartite Deed is reduced to the extent that the Council makes a payment to the Crown under this Part, and no further payments are required to be made by the Council in respect of a particular allotment if the liability to make payments under this Part in respect of that allotment ceases by virtue of section 6 or concludes by virtue of section 7.

Separate rate no longer to be declared

9. Clause 11 of the Tripartite Deed no longer has effect.

PART 3
REGULATIONS

Regulations

10. (1) The Governor may make regulations as necessary or expedient for the purposes of this Act.

(2) For the purposes of Part 2, the regulations may provide that a specified provision of the Tripartite Deed does not apply, or applies with prescribed variations.

(3) A regulation under subsection (2) may, if the regulation so provides, have retrospective effect from the day on which Part 2 came into operation (or from any subsequent day occurring before the regulation was made).

(4) A regulation under subsection (2) that would affect the Council cannot be made except at the request, or with the agreement, of the Council.

SCHEDULE

DATED: 31st DAY OF March 1993

DEED

BETWEEN

MINISTER OF TRANSPORT DEVELOPMENT

- AND -

DISTRICT COUNCIL OF PORT ELLIOT AND GOOLWA

- AND -

BINALONG PTY LTD

(A.C.N. 007 620 439)



SOUTH AUSTRALIA

CROWN SOLICITOR

Natwest Centre, 45 Pirie Street Adelaide SA 5000

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DEED

BETWEEN

MINISTER OF TRANSPORT DEVELOPMENT a body corporate pursuant to the Administration of Acts Act, 1910 of 14th Floor, State Administration Centre, Victoria Square, Adelaide in the State of South Australia (hereinafter called the "Minister") of the first part

AND

DISTRICT COUNCIL OF PORTELLIOT AND GOOLWA a body corporate constituted under or pursuant to the Local Government Act, 1934 of Cadell Street, Goolwa (hereinafter called the "Council") of the second part.

AND

BINALONG PTY LTD (A.C.N. 007 620 439) a company incorporated pursuant to the Corporations Law and whose registered office is situated at Randell Road, Hindmarsh Island in the said State (hereinafter called the "Company") of the other part.

RECITALS

- A. The Minister has agreed to construct or procure the construction of a bridge between Goolwa and Hindmarsh Island (hereinafter called the "Bridge").
- B. The Minister has incurred various costs and expenses in procuring the design of an appropriate bridge and the preparation of the requisite technical specification and architectural and engineering plans and drawings.
- C. It is intended that a tender specification be prepared for the purpose of seeking tenders from persons interested in constructing the Bridge and completing any ancillary works necessary or incidental to the construction of the Bridge.

- D. The Minister, the Council and the Company have agreed to contribute to the cost of the completion of the said works. Further, the Council has agreed to contribute to the costs of maintaining and upkeeping the Bridge.
- E. The Minister, the Council and the Company covenant that the Council and the Company shall contribute to the construction and maintenance of the Bridge on the terms and conditions contained in this Deed.

THE PARTIES COVENANT AS FOLLOWS.

1. RECITALS

The parties agree both that the matters referred to in the recitals of this Deed are true and correct in every material particular and that the recitals shall form part of this Deed.

2. DEFINITIONS & INTERPRETATION

Definitions

2.1 Subject to any inconsistency of subject or context, in the interpretation of this Deed the following terms and expressions are stipulated as having the following meanings.

2.1.1 "Allotment" means either "unit" for the purposes of the Strata Titles Act, 1988 or "allotment" as defined in subsection 2231a(1) of the Real Property Act, 1886, i.e.,

"allotment" means -

- (a) the whole of the land comprised in a certificate;
- (b) the whole of the land comprised in a registered conveyance of land that has not been brought under the provisions of this Act;
- (c) a separately defined piece of land that is delineated on a public map and separately identified by number or letter (not being a

piece of land that is identified in a Treasury receipt, certificate or other document or instrument of title as being part only of an allotment);

- (ca) two or more separately defined pieces of land that are delineated on a public map and that are identified in a Treasury receipt, certificate or other document or instrument of title as forming one allotment;
- (d) a separately defined piece of land delineated on a plan of division for the purpose of enabling the separate ownership in fee simple of that land;
- (e) a separately defined piece of land identified as an allotment in a plan prepared by the Registrar-General and accepted for filing in the Lands Titles Registration Office, but does not include any such land or piece of land that has ceased to be an allotment by virtue of subsection (2)".

which is situated on Hindmarsh Island but excluding any allotment which is not rateable pursuant to subsection 168(2) of the Local Government Act, 1934.

- 2.1.2 "Binalong Area" means that land situated on Hindmarsh Island the subject of the Development and which is more particularly defined as the "Residential Marina (Hindmarsh Island) Zone" in the Supplementary Development Plan to the Development Plan for the District Council of Port Elliot and Goolwa - Hindmarsh Island which is, as at the date of this Deed, available for public inspection and which is also intended, subsequently to the date of this Deed, to come into interim operation pursuant to section 43 of the Planning Act, 1983.

The said land is delineated in red on a copy of a plan being Sheet 1A of the Company's Application for Planning Consent dated March 1990 pursuant to section 51 of the Planning Act, 1982, is attached as Schedule One.

- 2.1.3 **"Bridge"** means the said bridge to be constructed between Goolwa and Hindmarsh Island in the manner described in the recitals excluding any roads approaching or leading to the said bridge.
- 2.1.4 **"Charge"** means the third registered debenture charge over the Company's business and undertaking and all of its property, assets and rights whatsoever and wheresoever both real and personal, tangible and intangible and whether present, future or contingent including, without limiting the generality of the foregoing, the goodwill of the Company's business and its uncalled and called but unpaid capital (including premiums) for the time being on the Company's shares.
- 2.1.5 **"Company Payment"** means a quarterly instalment paid by the Company to the Minister in respect of the Debt.
- 2.1.6 **"Construction Contract"** means the construction agreement to be entered into between the Minister and the successful tenderer for the completion of the Works.
- 2.1.7 **"Construction Costs"** means the sum of the following amounts:
- (a) the amount of six hundred and thirty five thousand dollars (\$635,000.00); and
 - (b) the aggregate amount of moneys incurred, paid or payable for the completion of the Works by the Minister under or pursuant to the Construction Contract including, without limitation, any reasonable variations to the cost or price tendered for the completion of the Works under or pursuant to the Construction Contract.

- 2.1.8 **"Council Payment"** means a payment made by the Council to the Minister in respect of the Debt.
- 2.1.9 **"CPI Number"** means the Consumer Price Index number for Adelaide (All Groups) published, from time to time, by the Australian Bureau of Statistics for the relevant quarter specified in this Deed.
- 2.1.10 **"Debt"** means the compounded aggregate amount, calculated in accordance with clause 7, of the payments to be made by the Company and the Council to the Minister under or pursuant to this Deed in respect of the Construction Costs.
- 2.1.11 **"Default Rate"** means the following interest rates:
- (a) in relation to a Company Payment or any other payment to be made by the Company to the Minister pursuant to this Deed, an interest rate equal to thirteen and one half per cent (13.5%) per annum; and
 - (b) in relation to a Council Payment or any other payment to be made by the Council to the Minister pursuant to this Deed, the interest rate which the Council may, pursuant to paragraph 184(8)(c) of the Local Government Act, 1936, charge or impose in respect of arrears of rates or of instalments of rates.
- 2.1.12 **"Development"** means the six (6) stage development to be undertaken by the Company on Hindmarsh Island as described in the development application made by the Company to the Governor of the State of South Australia pursuant to section 51 of the Planning Act, 1982, consent for the undertaking of which was given by the said Governor to the Company on or about 12 April 1990 subject to the fulfilment of various conditions and as the description of which may have been or may be amended, with the said Governor's consent, from time to time.

- 2.1.13 **"Division"** means the division of land into Allotments, the subdivision or the resubdivision of Allotments or the alteration of the boundaries of any Allotments.
- 2.1.14 **"Interest Rate"** means an interest rate equal to ten and one half per cent (10.5%) per annum.
- 2.1.15 **"Loan Agreement"** means a certain Deed of Loan and Guarantee made on the 17th day of May 1991 between, among others, Partnership Pacific Limited and the Company as amended by a Deed of Variation of Loan and Guarantee made on the 9th day of October 1991 between the said persons.
- 2.1.16 **"Non-residential Allotment"** means an Allotment which both is not a Residential Allotment and is not a public road, a reserve, a public open space of any other kind or any other land vested in or under the care, control and management of the Crown, a statutory instrumentality or the Council.
- 2.1.17 **"Partnership Pacific Debt"** means the amount payable by the Company to Partnership Pacific Limited as at the date of this Deed in respect of loans, advances, performance guarantees or other forms of credit or financial accommodation made or provided by the said Partnership Pacific Limited to the Company in relation to the Development under or pursuant to the Loan Agreement as certified by Partnership Pacific Ltd in the written certificate to be provided to the Minister pursuant to clause 17.
- 2.1.18 **"Payment Date"** means any 31 March, 30 June, 30 September or 31 December of a year during the Term on which a Company Payment is due and payable pursuant to this Deed.
- 2.1.19 **"Proposal"** means section 3.0 entitled "Proposal" of the Company's development application dated March 1990 to the Governor for development consent, a copy of which is contained in Schedule Two.

- 2.1.20 **"Residential Allotment"** means the following Allotments:
- (a) an Allotment described as a "Residential Allotment" either in the specification of the various components of each proposed stage of the Development contained in the Proposal or in any amendment to this specification which is consented to or agreed; or
 - (b) an Allotment which is not so described as a "Residential Allotment" in the Proposal or any amendment thereto but is an Allotment which is principally used as a private dwelling or for residential purposes.
- 2.1.21 **"Tender Specification"** means the documents in respect of the tender to be issued by the Commissioner of Highways on behalf of the Minister for the completion of the Works and which are to be entitled "Specification", "Construction Drawings" and "Appendices and Standard Specification".
- 2.1.22 **"Term"** means the period commencing on the date of this Deed and concluding on the date when the Debt has been paid or satisfied in full under or pursuant to the provisions of this Deed.
- 2.1.23 **"Value of the Non-residential Allotments"** means the value of the relevant Non-residential Allotments as determined pursuant to paragraph 9.3.3.
- 2.1.24 **"Works"** means the construction of the Bridge together with the undertaking of certain roadworks and any other ancillary works or tasks which are, in the opinion of the Minister, necessary or incidental to the satisfactory construction of the Bridge all of which are to be more particularly described in the Tender Specification.

2.2

Interpretation

Subject to any inconsistency of subject or context, the following rules of construction shall be used in the interpretation of this Deed:

- 2.2.1 words denoting the singular number or plural number include the plural number and singular number respectively;
- 2.2.2 words denoting any gender shall include all genders;
- 2.2.3 headings are for convenience only and shall not affect interpretation;
- 2.2.4 words denoting individuals shall include corporations and vice versa;
- 2.2.5 a reference to a recital, party, clause, schedule or annexure is a reference to a recital, party, clause, schedule or annexure of this Deed;
- 2.2.6 a reference to any Act, regulation or by-law shall be deemed to include all amendments thereto and all statutory provisions substituted hereafter;
- 2.2.7 the use of "or" shall be that of the inclusive "or", *i.e.*, meaning one, some or all of a number of possibilities or alternatives; and
- 2.2.8 all references to "dollars" and "\$" are to Australian dollars.

3. **DEED OF PRIORITY WITH PARTNERSHIP PACIFIC LTD**

The parties acknowledge and declare that it is intended that the Minister and Partnership Pacific Ltd enter into a deed of priority in relation to, among other things, the repayment by the Company of the Partnership Pacific Debt, the order of priority as between the Charge and the said Partnership Pacific Ltd's security for the Partnership Pacific Debt and the making or granting by the said Partnership Pacific Ltd to the Company of any further loans, advances or other form of credit or financial accommodation subsequently to the date of the said deed of priority.

4. **COMPLETION OF THE WORKS**

- 4.1 The Minister covenants with the Council and the Company that the Minister shall procure the completion of the Works.

- 4.2 The Minister covenants with the Council that the Minister shall procure that the Construction Contract contains provisions imposing obligations on the successful tenderer that due care and skill shall be exercised in the completion of the Works and that the Works shall be completed in a proper and workmanlike manner using good and proper materials fit for the purpose for which they are to be used or intended.
- 4.3 The Minister and the Council acknowledge that the Bridge shall be vested in and be under the care, control and management of the Minister on and from the date of the completion of the Works.

5. **CONTRIBUTION TO THE CONSTRUCTION COSTS**

- 5.1 The Minister, the Council and the Company covenant that the Company shall contribute to the cost of the completion of the Works in the amount and in the manner set out in this Deed.
- 5.2 The parties covenant and acknowledge that the following principles have been agreed in relation to determining the amount of the said contribution to be made by the Company.
- 5.2.1 If the aggregate amount of the Construction Costs are less than or equal to six million dollars (\$6,000,000.00) then the said contribution shall be equal to one half ($\frac{1}{2}$) of the said aggregate amount of the Construction Costs.
- 5.2.2 If the aggregate amount of the Construction Costs are greater than six million dollars (\$6,000,000.00) but less than or equal to seven million dollars (\$7,000,000.00) then the said contribution shall be equal to the sum of three million dollars (\$3,000,000.00) and of the difference between the said aggregate amount of the Construction Costs and six million dollars (\$6,000,000.00).
- 5.2.3 If the aggregate amount of the Construction Costs are greater than seven million dollars (\$7,000,000.00) then the said contribution shall be equal to the amount determined in accordance with paragraph 2 of this subclause.

- 5.2.4 The parties have agreed that, during the period in which the Works are being constructed, the progressive aggregate amount of the said contribution shall be determined in accordance with the provisions of clause 7 and that this progressive aggregate amount shall be compounded quarterly in accordance with the formulae set out in subclause 7.1.
- 5.2.5 The parties have agreed that the amount of six hundred thirty five thousand dollars (\$635,000.00) is the total of all Construction Costs incurred or to be incurred by the Minister in or incidental to completing the Works other than the Construction Costs incurred pursuant or incidental to the Construction Contract, including, without limitation, any reasonable variations to the cost or price tendered for the completion of the Works payable under or pursuant to the Construction Contract.

6. **CERTIFICATION OF THE AMOUNT OF THE DEBT**

- 6.1 The Minister, the Council and the Company covenant that, for the purpose of determining the amount of the Debt, the Minister shall provide to the Council and the Company a written certificate of the total amount of the Construction Costs. The said certificate shall, subject to the verification and audit of the said amount pursuant to subclauses 6.2 and 6.3, be conclusive evidence of the said total amount of the Construction Costs in the absence of any manifest error, omission or miscalculation.
- 6.2 The Council or the Company may, by the service of a written notice on the Minister, require the Minister to substantiate the amount of the said total amount of Construction Costs by providing an audited itemized statement of the said amount. The said statement shall be audited by the Auditor-General. Further, the Minister shall use her best endeavours to provide the said statement as soon as reasonably practicable after the service of any such notice.

- 6.3 The Council or the Company may, by the service of a written notice on the Minister, require the Minister to provide access to the Minister's financial records in respect of the Construction Costs for the purpose of verifying the said total amount of the Construction Costs. The Minister shall provide the said access within twenty eight (28) days of the service of any such notice. Further, the Council or the Company, may at its own cost and expense in all things, appoint an auditor to verify and audit the said financial records.
- 6.4 The Council or the Company may, by written notice served on the Minister within thirty (30) days of being given access to the Minister's financial records, dispute the said total amount of the Construction Costs. Any such dispute shall be determined by a suitably qualified person agreed upon between the parties or, in the absence of any such agreement, shall be determined by a person nominated by the Auditor-General. The person appointed to determine any such dispute shall act as an independent expert and not as an arbitrator. Further, the parties covenant that they shall each not dispute or challenge or purport to dispute or challenge, whether by instituting litigious proceedings or otherwise, the determination of a dispute by any such person.

7. **CALCULATION OF THE DEBT AND THE AMOUNT OF THE COMPANY PAYMENTS**

- 7.1 The parties acknowledge and declare in the following terms in respect of the following matters:
- 7.1.1 that the formulae set out in subclauses 7.2 and 7.4 operate in the following manner:
- (a) pursuant to formula (1) set out in subclause 7.2, the change in the Debt in a relevant quarter is equal to the sum in that quarter of the amount of the Construction Costs incurred and which are to be added to the amount of the Debt pursuant to subclause 7.3, of the aggregate amount of moneys paid by the Minister to

the Council pursuant to subparagraphs 11.2.2(a) and (b) less the aggregate amount of Council Payments and Company Payments;

- (b) pursuant to formula (2) set out in subclause 7.2, the amount of the Debt is to be compounded at the end of each quarter at a rate equal to one quarter of the Interest Rate; and
- (c) pursuant to the formula set out in subclause 7.4, the amount of each four (4) consecutive Company Payments is to be determined on a credit foncier basis such that the amount of a Company Payment is that amount which would be sufficient to pay or repay the amount of the Debt by the payment of equal quarterly instalments during the period commencing on the date on which the amount of such Company Payments is being calculated pursuant to subclause 7.4 and concluding at the end of the quarter being forty eight (48) entire quarters after the date of practical completion of the Works;

7.1.2 if there is any ambiguity or inconsistency in the interpretation, construction or operation between paragraph 7.1.1 and subclauses 7.2 and 7.4 then subclauses 7.2 and 7.4 shall prevail to determine any such ambiguity or inconsistency.

7.2 The parties agree that the amount of the Debt from time to time shall be compounded quarterly on 31 March, 30 June, 30 September and 31 December of each year of the Term such that amount of the Debt shall be determined in accordance with the following formulae:

$$X_n = C_n - R_n - P_n + S_n \quad (1)$$

$$D_n = \sum_{r=1}^n X_r (1.02625)^{n-r} \quad (2)$$

where:

- "D_n" is the compounded amount of the Debt as at the end of the (n)th quarter;
- "X_n" is the change in the Debt in the (n)th quarter;
- "C_n" is the amount of the Construction Costs incurred in the (n)th quarter which is to be added to the amount of the Debt pursuant to subclause 7.3;
- "R_n" is the aggregate of the Council Payments made in the (n)th quarter;
- "P_n" is the aggregate amount of the Company Payments made in the (n)th quarter;
- "S_n" is the aggregate amount of moneys paid by the Minister to the Council pursuant to subparagraphs 11.2.2(a) and (b) in the (n)th quarter i.e., any payments made by the Minister to the Council in respect of refunds of rates or pursuant to the Minister's indemnity in respect of legal proceedings or making refunds of rates; and
- "n" is the number of the (n)th consecutive quarter from the first quarter (i.e., n = 1) which commenced on 1 January 1993 and which will conclude on 31 March 1993.

7.3 For the purposes of the application of the formulae set out in subclause 7.2 and of the calculation of the amount of the Debt the parties agree as follows.

7.3.1 "C_n" shall be determined in the following manner.

- (a) If and until the progressive aggregate amount of Construction Costs is less than or equal to six million dollars (\$6,000,000.00) then "C_n" for any quarter "n" shall include one half (½) of the Construction Costs incurred in that quarter "n" to the extent that the said progressive aggregate amount is less than or equal to six million dollars (\$6,000,000.00).

- (b) If the progressive aggregate amount of Construction Costs is greater than the said six million dollars (\$6,000,000.00) but less than or equal to seven million dollars (\$7,000,000.00) then "C_n" for any such quarter "n" shall include the Construction Costs incurred in that quarter "n" to the extent that the said progressive aggregate amount is greater than six million dollars (\$6,000,000.00) but less than or equal to seven million dollars (\$7,000,000.00).
- (c) If the progressive aggregate amount of Construction Costs in a quarter "n" is greater than the said seven million dollars (\$7,000,000.00) then "C_n" for any such quarter "n" shall not include the Construction Costs incurred in that quarter "n" to the extent that the said progressive aggregate amount is greater than seven million dollars (\$7,000,000.00).
- 7.3.2 The first quarter (i.e., n=1) shall commence on 1 January 1993 and conclude on 31 March 1993.
- 7.3.3 As at 1 January 1993, the amount of the Construction Costs incurred and the amount of the Debt is deemed to be three hundred and seventeen thousand five hundred dollars (\$317,500.00) and one hundred fifty eight thousand seven hundred and fifty dollars (\$158,750.00) respectively.
- 7.3.4 The amount of 1.02625 is equal to the sum of one (1) and of one quarter (1/4) of the Interest Rate.
- 7.3.5 The Construction Costs for the quarter in which occurs the date of practical completion of the Works shall be deemed to include the amount of three hundred and seventeen thousand five hundred dollars (\$317,500.00) in addition to the amount of the Construction Costs actually incurred in this quarter.
- 7.4 The parties agree that the amount of each Company Payment shall be calculated annually, in respect of the first four Company Payments, as

from the first Payment Date, and, thereafter, in respect of the four Company Payments to be made in a year of the Term commencing on an anniversary of the first Payment Date, on each anniversary of the first Payment Date, on a credit foncier basis in accordance with the following formula:

$$\text{PMT} = [D \times (0.02625) \div [1 - (1.02625)^t]] - \text{LS}$$

where:

- "PMT" is the amount of the quarterly Company Payment payable in a year of the Term commencing either on the first Payment Date or on an anniversary of the first Payment Date;
- "D" is the amount of the Debt, calculated in accordance with subclause 7.2, either as at the first Payment Date or as at an anniversary of the first Payment Date;
- "t" is the number of quarters remaining in the period commencing on the Payment Date on which the amount of a Company Payment is being calculated and concluding at the end of the quarter being forty eight (48) entire quarters after the date of practical completion of the Works;
- "LS" is the aggregate amount of any lump sum payments made by the Council to the Minister pursuant to subclause 9.4 in the quarter ending on a relevant Payment Date in respect of Allotments in the Binalong Area of which the Company is the registered proprietor.

- 7.5 The parties covenant and acknowledge that, until the condition precedent specified in paragraph 8.1.6 is satisfied, all Council Payments

made by the Council shall, in accordance with the foregoing principles and formulae, be applied in or towards the reduction of the Debt.

8. MANNER OF PAYMENT OR REPAYMENT OF THE DEBT

- 8.1 The Minister, the Council and the Company covenant that the Company shall pay or repay the Contribution to the Minister in the following manner.
- 8.1.1 Subject to paragraph 7 of this subclause, the Company shall pay or repay the Debt to the Minister over the period commencing on the first Payment Date and concluding at the end of the quarter being forty eight (48) entire quarters after the date of practical completion of the Works by the payment of quarterly instalments, the amount of each of which is to be calculated in accordance with the provisions of this Deed.
- 8.1.2 The Company shall pay each Company Payment on each Payment Date occurring during the Term.
- 8.1.3 The first Company Payment to be paid by the Company to the Minister under or pursuant to this Deed shall be due and payable on the first Payment Date, being the 31 March, 30 June, 30 September or 31 December of the fourth (4th) quarter occurring after the end of the quarter in which the condition precedent to the Company's obligation to commence paying or repaying the Debt specified in paragraph 6 has been satisfied.
- 8.1.4 The amount of each Company Payment shall be calculated in accordance with the formula set out in subclause 7.4.
- 8.1.5 The amount both of the Debt and of the Company Payments shall be recalculated on each anniversary of the first Payment Date during the Term in the manner specified in clause 7 of this Deed.
- 8.1.6 The obligation of the Company to commence paying or repaying the Debt to the Minister under or pursuant to this

clause shall be subject to and conditional upon the Company paying or satisfying the Partnership Pacific Debt or being released or discharged from the payment or satisfaction of the Partnership Pacific Debt such that the amount of the Partnership Pacific Debt, at that time, is less than or equal to ONE MILLION DOLLARS ((\$1,000,000.00).

8.1.7 If, at any time before the Debt has been paid or repaid in full to the Minister, the Development is completed such that at least ninety five per cent (95%) of the total number of Residential and Non-residential Allotments described in the Proposal subdivided or created by the Company for the purpose of sale, disposal or leasing have been sold and settlements have been effected then the entire amount of the Debt calculated in accordance with the provisions of this Deed as is outstanding at that time shall be due and payable by the Company to the Minister on or before the expiration of thirty (30) days from the date of the said completion of the Development.

8.2 If, for any quarter during the Term, the aggregate amount of lump sum payments made by the Council pursuant to subclause 9.4 is greater than the Company Payment payable in the absence of any such lump sum payments for that quarter determined in accordance with subclause 7.4 (i.e., "LS" is greater than " $[D \times (0.02625) \div [1 - (1.02625)^{-q}]]$ ") then the amount of the difference shall be credited or applied in or towards the Company Payments to be made in succeeding quarters.

8.3 The payment or repayment of the Debt shall be secured by the Company granting the Charge to the Minister. The following provisions shall apply to the Charge together with any associated instrument, form or other document necessary to register the Charge:

8.3.1 they shall be in such form as may be required by the Minister;

8.3.2 they shall be prepared by the Crown Solicitor's Office; and

8.3.3 they shall be executed by the Company and returned to the Minister within three (3) business days of their delivery to the Company or the Company's solicitors.

8.4 The Company shall pay its own and the Minister's costs and expenses, including all legal costs and expenses, of and incidental to the negotiation, preparation and engrossment of the Charge or any other form of document necessary to register the Charge. The Company shall pay any stamp duty and registration fees payable in respect of the Charge.

9. COUNCIL PAYMENTS

The Council covenants with the Minister that the Council shall pay the Council Payments to the Minister for the purpose of decreasing the amount of the Debt such that each Council Payment shall be applied by the Minister in reduction of the Debt in accordance with the provisions of this Deed. The Council further covenants with the Minister that the Council shall pay Council Payments to the Minister in the following manner.

9.1 The Council shall pay Council Payments to the Minister annually in each year of the following period:

9.1.1 the period which commences on the later either of the 31 January first occurring after the date of practical completion of the Works or of 31 January 1995; and

9.1.2 the period which concludes on the earlier either of the expiration of the Term or of the twentieth anniversary of the date of commencement of this period specified in paragraph 1.

9.2 The Council shall pay the Council Payments annually on or before 31 January of each year during the period specified in subclause 1 of this clause.

9.3 The amount of an annual Council Payment shall be determined in accordance with the following formula:

$$9.3.1 \quad CP = (N_1 \times A) + (N_2 \times A) + (V_1 \times (0.005)) + (V_2 \times (0.005))$$

where:

"CP" is the amount of the Council Payment payable in a year of the period specified in subclause 9.1;

"N₁" is, subject to paragraph 9.3.4, the number of Residential Allotments situated on Hindmarsh Island but outside of the Binalong Area which were subdivided or created after the date on which the Minister accepted, pursuant to the Tender Specification, the successful tenderer's tender for the completion of the Works, as at the 1 June immediately preceding the date on which a Council Payment is payable;

"N₂" is the number of Residential Allotments in the Binalong Area as at the 1 June immediately preceding the date on which a Council Payment is payable;

"A" is the amount calculated pursuant to paragraph 9.3.2;

"V₁" is, subject to paragraph 9.3.4, the Value of the Non-residential Allotments, as determined pursuant to paragraph 9.3.3, in respect of Non-residential Allotments situated on Hindmarsh Island but outside of the Binalong Area which were subdivided or created after the date on which Minister accepted, pursuant to the Tender Specification, the successful tenderer's tender for the completion of the Works; and

"V₂" is the Value of the Non-residential Allotments, as determined pursuant to paragraph 9.3.3, in respect of Non-residential Allotments in the Binalong Area.

9.3.2 The amount A in the formula set out in paragraph 9.3.1 shall be calculated annually during the period specified in subclause 9.1 in the following manner:

$$A = (\$325.00) \times [(B \div C) + 0.06]$$

where:

"A" is the amount to be determined;

"B" is the CPI Number for the quarter ending on the 31 March immediately before a Council Payment is payable;

"C" is the CPI Number for the quarter ended on 31 March 1992.

9.3.3 The Value of the Non-residential Allotments (i.e., "V₁" and "V₂" in the formula set out in subclause 9.3) shall be determined annually during the period specified in subclause 1 of this clause and shall be equal to the aggregate capital value, as determined by the Valuer-General pursuant to the Valuation of Land Act, 1971, of the relevant Non-residential Allotments subdivided or created as at the 1 June immediately preceding the date on which a Council Payment is payable.

9.3.4 If there occurs the Division of any Allotments, other than the Division of an Allotment or Allotments situated outside of the Binalong Area which were subdivided or created before the date on which the Minister accepted, pursuant to the Tender Specification, the successful tenderer's tender for the completion of the Works such that such a Division does not increase the number of Allotments, then the number of Residential Allotments ("N₁" and N₂") and the Value of the Non-residential Allotments ("V₁" and "V₂") shall be determined by reference to the Division of the said Allotments in the current Plan of Division deposited in respect of the said Division in the Lands Titles Registration Office for the purposes of the Real Property Act, 1886 or the Strata Titles Act, 1988.

- 9.4 The Council may, from time to time, elect to pay to the Minister the lump sum amount of four thousand five hundred dollars (\$4,500.00) either in respect of an Allotment in the Binalong Area or in respect of an Allotment situated on Hindmarsh Island but outside of Binalong Area and which was subdivided or created after the date on which the Minister accepted, pursuant to the Tender Specification, the successful tenderer's tender for the completion of the Works. If the Council makes any such payment in respect of any such Allotment then that Allotment shall not be included in determining the number of Residential Allotments ("N₁" and "N₂ ") or the Value of the Non-residential Allotments ("V₁" and "V₂") (as the case may be) for the purposes of the formula set out in paragraph 9.3.1.
- 9.5 If the Council receives from ratepayers any lump sum payments in respect of Allotments referred to in subclause 9.4 then the Council covenants that it shall pay to the Minister, in respect of the Debt, an amount equivalent to any such payments within thirty (30) days of the Council's receipt of the said lump sum payments.
- 9.6 The Council shall, together with any Council Payment or any payment made pursuant to subclause 9.5, provide to the Minister an itemized statement containing the following information:
- 9.6.1 the number of Allotments included in "N₁" and "N₂" for the purposes of the application of the formula set out in paragraph 9.3.1 to which the Council Payment relates;
- 9.6.2 the Values of the Non-residential Allotments "V₁" and "V₂" for the purposes of the application of the formula set out in paragraph 9.3.1 to which the Council Payment relates;
- 9.6.3 the value of "A" used in calculating the amount of the relevant Council Payment; and
- 9.6.4 if the relevant payment is made by the Council pursuant to subclause 9.4 then an apportionment of the amount of the payment between Residential Allotments and Non-residential Allotments.

10. **TERMINATION OF OBLIGATIONS TO MAKE COUNCIL PAYMENTS AND COMPANY PAYMENTS**

If the amount of the Debt as determined pursuant to this Deed is equal to or less than zero then both the Company's obligation to make Company Payments and the Council's obligation to make Council Payments shall cease and terminate absolutely.

11. **DECLARATION OF A SEPARATE RATE OR A DIFFERENTIAL SEPARATE RATE**

11.1 The Minister and the Council acknowledge that the Council may fund or finance the Council Payments by declaring, under or pursuant to the Local Government Act, 1934, either a separate rate or a differential separate rate. The Minister and the Council covenant if the Council proposes to declare any such separate rate or differential separate rate then the Council shall consult and confer with the Minister or her legal advisers in respect of all matters or things relating or incidental to any such declaration, other than matters or things relating or incidental to any procedural requirement stipulated in the Local Government Act, 1934 or elsewhere for the declaration of rates or the imposition of charges by councils, for the purpose of ensuring, to the greatest extent possible, that the declaration of any such rate is within the Council's power.

11.2 Subject to subclause 3 of this clause, if a court of competent jurisdiction determines that it is beyond the power of the Council to declare a said separate rate or differential separate rate whether because the Council is not empowered to declare such a rate or because it would constitute an exercise of power by the Council for an improper purpose then the following provisions shall apply:

11.2.1 the amount of the next Council Payment due after the said decision has been delivered shall be decreased to the extent required by the said decision by excluding from the calculation, pursuant to subclause 9.3, of the amount of that

Council Payment and any subsequent Council Payments any Allotments the subject of or which are affected by the said decision to the extent to which the declaration of the said separate rate or differential separate rate was beyond the Council's said powers;

11.2.2 if, as a consequence of the said decision, the Council is required to refund to ratepayers any moneys collected by way of the said separate rate or differential separate rate then the following provisions shall apply:

- (a) the Minister shall pay to the Council an amount equal to the aggregate amount of the said refunds which have been paid to the Minister by way of Council Payments within thirty (30) days of the Minister receiving from the Council a written notice requesting such a payment together with an itemized statement setting out the manner in which the amount of the said payment has been calculated; and
- (b) the Minister shall indemnify and keep indemnified the Council for any cost, expense or loss reasonably incurred by the Council as a consequence of the said decision in respect of or incidental to either the legal proceedings in which the said decision was made or the making of the said refunds.

11.3 The operation of subclause 2 of this clause, and, in particular, the Minister's obligation to pay moneys to the Council or to indemnify the Council shall be subject to and conditional upon the satisfaction of the following provisions:

11.3.1 the said separate rate or differential separate rate must have been declared in relation to land situated on Hindmarsh Island;

11.3.2 the Council shall consult and confer with the Minister for the purpose of determining, in light of the said decision, a basis on

- which a separate rate, a differential separate rate or a differential general rate may be validly declared by the Council in order to fund or finance the Council Payments;
- 11.3.3 the reason given by the court in making the said decision was that it was beyond the Council's power, as aforesaid either because the Council is not empowered to declare such a rate or because it constitutes an exercise of power by the Council for an improper purpose, to declare the rate in issue;
- 11.3.4 the said decision did not hold that the sole reason for the invalidity of the said rate was because the Council failed to perform, observe or comply with a procedural requirement stipulated in the Local Government Act, 1934 or elsewhere for the declaration of rates or the imposition of charges by councils; and
- 11.3.5 the proceedings in respect of which the said decision was made or any appeal or case stated from the original proceedings or the said decision were conducted in the manner directed by the Minister or her duly authorized delegates, employees or agents in accordance with the provisions of this clause.
- 11.4 The Minister and the Council covenant that the Minister and the Council shall consult in relation to all matters or things relating or incidental to defending any proceedings instituted against the Council which challenge the validity of the said separate rate or differential separate rate or any appeal or case stated from any such original proceedings. The Minister and the Council further covenant that the Minister may, after consultation with the Council, direct, in her absolute and unfettered discretion, the Council in respect of any matter or thing relating or incidental to any such proceedings, appeal or case stated, including, without limitation, selecting and instructing solicitors and counsel and the settling of any such proceedings, appeal or case stated.

11.5 If the Council has not paid a Council Payment or a part thereof on or before 31 January of a year during the period specified in subclause 1 of this clause and that non-payment arises as a consequence of ratepayers failing to pay to the Council the separate rate or the differential separate rate referred to in clause 11 which the Council may declare then the Minister covenants that the Minister shall not institute any legal proceedings against the Council for the payment of a Council Payment or part thereof payable under or pursuant to this Deed until after the fourth anniversary of the 31 January on which that Council Payment become due and payable under or pursuant to this Deed.

12. **DEFAULT INTEREST**

12.1 If a Council Payment, Company Payment or any other payment to be made by either the Council or the Company to the Minister pursuant to this Deed has not been made by the due date specified in this Deed then the Company or the Council (as the case may be) shall pay interest on the amount of any such payment due and payable until payment is made to the Minister.

12.2 Any such outstanding payment shall bear interest at the Default Rate.

12.3 All default interest payable by the Company or the Council (as the case may be) shall be paid contemporaneously with the outstanding payment to which the default interest relates.

12.4 Default interest shall be calculated in the following manner:

12.4.1 in respect of an outstanding amount payable by the Company, daily on the amount of the outstanding payment; and

12.4.2 in respect of an outstanding amount payable by the Council, in the manner prescribed by the Local Government Act, 1936.

12.5 Any payment received after 4:00 p.m. on a business day shall be deemed to have been received on the next business day for the purposes of the calculation of the amount of default interest payable by the Company or the Council (as the case may be) under or pursuant to this Deed.

13. OPERATION & TERM OF THIS DEED

Subject to this Deed, the provisions of this Deed shall have effect and operate for the Term.

14. PROVISION OF INFORMATION

The Company shall, within twenty eight (28) days of its receipt of a written request from the Minister, provide the Minister with such information as the Minister may require in respect of any matter or thing relating or incidental to the Partnership Pacific Debt, the Company's other debts or liabilities from time to time, the Development or the state of affairs concerning the sale of Allotments created as a consequence of the progress of the Development.

15. COMMUNICATION WITH PARTNERSHIP PACIFIC AND OTHER FINANCIERS

15.1 The Company covenants that the Minister may discuss, communicate and consult directly with or obtain information from Partnership Pacific Ltd or any other creditor of the Company from time to time in respect of any matter or thing relating or incidental to the Partnership Pacific Debt or the Company's other debts or liabilities from time to time including the provision of any relevant agreements, securities or other documents relating or incidental to the Company's indebtedness to the said Partnership Pacific Ltd or other creditor.

15.2 The Company covenants with the Minister that subclause 15.1 constitutes both the Company's consent, approval or authority to Partnership Pacific Limited to disclose the information or provide the documents referred to in that clause and the Company's waiver of any duties of confidentiality which the said Partnership Pacific Ltd may owe to the Company as a consequence of a banker - customer relationship or any other relationship between them.

16. ACCOUNTING RECORDS & FINANCIAL STATEMENTS

The Company covenants in the following terms in respect of the following matters or things:

- 16.1 that the Company shall keep and maintain proper accounting records in such manner and form as may be required by law;
- 16.2 that such accounting records are available for inspection by the Minister or any of the Minister's employees or agents authorized in writing for that purpose during usual business hours upon the Minister giving to the Company not less than twenty eight (28) days' written notice;
- 16.3 that such accounting records shall be kept at the registered office of the Company or such other place where such accounting records are usually kept from time to time;
- 16.4 that the Minister may, by written notice served on the Company, require that the balance sheet, profit and loss statement and any other financial statements required by law to be prepared in relation to the affairs of the Company are audited, at the Company's cost in all things, for each financial year during the term of this Deed; and
- 16.5 that the Minister is provided, within thirty (30) days of the end of a financial year, with copies of a set of the Company's final financial statements or accounts, whether audited or not, in respect of each financial year during the term of this Deed, and, if the Company's financial statements are audited, copies of any management letters between the Company and its auditors.

17. THE PARTNERSHIP PACIFIC DEBT

- 17.1 The Company shall provide to the Minister, on the date of the Company's execution of this Deed, a certificate from Partnership Pacific Limited which specifies the amount of the Partnership Pacific Debt as at the date of this Deed.
- 17.2 The Company warrants and represents to the Minister that, as at the date of this Deed, the amount of the Partnership Pacific Debt is as specified in the said letter.

- 17.3 For the purposes of this Deed and in particular for the satisfaction of the condition precedent specified in paragraph 8.1.6, the Partnership Pacific Debt shall be deemed to be paid or repaid by the Company in the following manner.
- 17.3.1 All payments made by the Company to Partnership Pacific Ltd on and from the date of this Deed shall be deemed to be paid in reduction of the Partnership Pacific Debt.
- 17.3.2 The Partnership Pacific Debt shall be deemed to be notionally paid or repaid in full when the aggregate amount of payments made by the Company to Partnership Pacific Ltd is sufficient to pay, satisfy or discharge in full, in accordance with the Loan Agreement, the Partnership Pacific Debt together with interest on the Partnership Pacific Debt charged in accordance with the Loan Agreement.
- 17.4 The Company covenants with the Minister that the Company shall, on each 1 July and 1 January of the Term, provide to the Minister a written statement setting out the following information for each period during the Term commencing either on 1 January and concluding on 30 June or on 1 July and concluding on 31 December:
- 17.4.1 the amounts of any payments made by the Company to Partnership Pacific Ltd in respect of the Partnership Pacific Debt or any other indebtedness or liability owed or payable by the Company to Partnership Pacific Ltd;
- 17.4.2 the dates on which any such payments were made;
- 17.4.3 the interest rates applicable during the period to which the said written statement relates, including any applicable penalty or default interest rates;
- 17.4.4 any changes to the said interest rates during the period to which the said written statement relates; and
- 17.4.5 any other information, facts or data which the Minister may reasonably require in order to be able to calculate whether the Partnership Pacific Debt has been paid, satisfied or discharged

in full in accordance with the principles set out in subclause 17.3.

18. **PAYMENT BY THE MINISTER OF THE PARTNERSHIP PACIFIC DEBT**

- 18.1 The Minister and the Company covenant that the Minister may, at any time during the Term, pay or repay to Partnership Pacific Ltd for and on behalf of the Company the amount outstanding in respect of the Partnership Pacific Debt at that time for the purpose of paying or satisfying the Partnership Pacific Debt in full.
- 18.2 If the Minister exercises her election or option to pay or satisfy the Partnership Pacific Debt for and on behalf of the Company then the condition precedent contained in paragraph 8.1.6 shall be satisfied on the date on which any such payment is made.
- 18.3 The Minister and the Company covenant and acknowledge that the amount of any such payment made by the Minister in respect of the Partnership Pacific Debt shall be a separate debt to the Debt. The Minister and the Company further covenant and acknowledge in the following terms in respect of the following matters:
- 18.3.1 that the amount of the said separate debt shall be compounded at the end of each quarter at a rate equal to one quarter of the Interest Rate in the same manner as the Debt is to be compounded pursuant to subclause 7.2;
- 18.3.2 that the compounded amount of the said separate debt shall be paid or repaid in the period specified in paragraph 8.1.1 during which the Debt is to be paid or repaid;
- 18.3.3 that the amount of each payment to be made by the Company in respect of the said separate debt shall be calculated in the same manner as the amount of a Company Payment is to be calculated pursuant to subclause 7.4 both such that the reference to the "Debt" in the formula set out in that subclause is to be construed as a reference to the said

separate debt and such that "LS" in this formula is equal to zero; and

- 18.3.4 that the Company shall pay each such payment in respect of the said separate debt on each Payment Date together with the Company Payment due and payable on that date.

19. **MAINTENANCE OF THE BRIDGE**

19.1 The Minister and the Council covenant and acknowledge that the Minister shall be responsible for the maintenance and upkeep of the Bridge on and from the date of practical completion of the Works.

19.2 The Minister and the Council covenant that the Council shall contribute to the cost of maintaining and upkeeping of the Bridge in the following manner.

19.2.1 The Council shall pay the first such maintenance payment on or before thirty (30) days of being served with a notice from the Minister requesting payment together with a certificate of practical completion of the Works issued under or pursuant to the Construction Contract.

19.2.2 The Council shall pay all subsequent maintenance payments annually in advance on the anniversary of the date of practical completion of the Works.

19.2.3 The amount of each maintenance payment shall be determined in accordance with the following formula:

$$A = B \times (C \div D)$$

- "A" is the amount of the maintenance payment;
 "B" is the amount of twelve thousand dollars (\$12,000.00);
 "C" is, in respect of the first maintenance payment, the CPI Number for the quarter ending immediately before the date of the service of the said notice, or, is, in respect of all subsequent maintenance payments, the CPI

Number for the quarter ending immediately before the anniversary of the said date of practical completion of the Works;

"D" is the CPI Number for the quarter ending on 30 June 1993.

- 19.3 The Minister and the Council covenant and acknowledge that, unless otherwise agreed in writing, the effect and operation of this clause together with such other provisions as may be necessary for this purpose shall continue and survive the expiration of the Term and the consequent termination of the other provisions of this Deed.
- 19.4 The Minister and the Council acknowledge and declare that, for the purposes of this clause, the expression "date of practical completion of the Works" bears the same meaning as that stipulated for it in the Construction Contract.
- 19.5 The Minister and the Council acknowledge and declare that, for the purposes of this clause, "Bridge" shall refer to the actual bridge structure and shall be interpreted or construed to exclude any reference to roads approaching or leading to the bridge structure. Further, the said actual bridge structure is pictorially represented as being between the two points denoted "End of Deck" in an elevation of the Bridge contained in Drawing No. 23C036/02 prepared by PPK Consultants and which is contained in the Tender Specification. The Minister and the Council further acknowledge and declare that, pursuant to the provisions of the Local Government Act, 1934, any such roads approaching or leading to the said bridge structure shall be "public roads or streets" and consequently the Council shall maintain or repair any such roads in accordance with the provisions of the said Act.

20. ASSISTANCE

The Council and the Company, jointly and severally, covenant to provide the Minister with such reasonable assistance as the Minister or her employees, agents,

delegates or contractors may require for the purpose of or incidental to the completion of the Works.

21. **ACCESS**

The Council and the Company, jointly and severally, covenant to permit the Minister or her duly authorized employees, agents, delegates or contractors such access as may be required to any land vested in, possessed by or under the control of the Company or the Council for the purpose of or incidental to the completion of the Works upon receipt from the Minister of a period of notice which is reasonable in all of the circumstances, other than in the case of an emergency where prior notice is not required.

22. **TIME OF THE ESSENCE**

Time shall be of the essence in respect of any time, date or period specified in this Deed.

23. **EMPLOYEES & AGENTS**

The parties covenant and acknowledge that any act, matter or thing which either is required to be performed or done by a party or is permitted to be performed or done by a party may be performed or done by a party's duly authorized employees, agents, delegates or contractors.

24. **FURTHER ASSURANCES**

The parties shall do all acts, matters and things and sign all documents and shall cause to be done all acts necessary to give full effect to the terms of this Deed.

25. **ENTIRE DEED**

This Deed contains the entire agreement between the parties in respect of the subject matter hereof and the parties agree that this Deed supersedes and extinguishes any prior agreement or understanding (if any) between the parties. Further, no other agreement, whether collateral or otherwise, shall be taken to have been formed between the parties by reason of any promise, representation,

inducement or undertaking (if any) given or made by one party to the other prior to the date hereof.

26. **WAIVER**

26.1 A waiver of a provision of this Deed must both be in writing and be signed by each party or by a person duly authorized to execute such a document on behalf of a party.

26.2 No waiver by a party of a breach of a term or condition of this Deed shall operate as a waiver of another breach of the same or of any other term or condition of this Deed.

26.3 No forbearance, delay or indulgence by a party in enforcing the provisions of this Deed shall prejudice or restrict the rights of that party in any way.

27. **MODIFICATION**

This Deed shall not be amended or varied other than by a written instrument expressed both to be a Deed and to be supplemental to or in substitution for the whole or a part of this Deed. Further, any such instrument shall be signed by each party or by a person duly authorized to execute such an instrument on behalf of a party.

28. **SEVERANCE**

If a provision of this Deed should be for any reason unlawful, void, invalid or unenforceable then the offending provision shall be severed from this Deed without affecting the validity or enforceability of the remainder of this Deed.

29. **NOTICES**

29.1 Any notice to be given or made pursuant to the provisions of this Deed shall be in writing and may be signed by the authorized agent of the party giving the same. Notices may be served by delivery, mail or facsimile transmission to the following addresses and numbers.

29.1.1 To the Minister:

Minister of Transport Development
14th Floor
State Administration Centre
Victoria Square
ADELAIDE SA 5000

Facsimile: (08) 226 0844

29.1.2 To the Council:

The District Clerk
District Council of Port Elliot and Goolwa
PO Box 21
GOOLWA S.A. 5214

Facsimile: (085) 553 603

29.1.3 To the Company:

Binalong Pty Ltd
Randell Road
HINDMARSH ISLAND SA 5214

Facsimile: (085) 553 890

29.2 All such notices and communications shall be effective and be deemed to have been received in the following circumstances:

29.2.1 if delivered, upon delivery;

29.2.2 if sent by mail, upon posting; or

29.2.3 if sent by facsimile transmission, upon receipt of the receiver's answer back code.

29.3 A party may modify either its address or its facsimile number, from time to time, by a written notice served on the other party.

30. **COSTS & STAMP DUTY**

30.1 Each party shall bear their own costs incurred in and incidental to the negotiation, preparation and execution of this Deed.

30.2 The Minister shall be responsible for and pay any stamp duty assessed or charged in respect of this Deed.

31. **PROPER LAW**

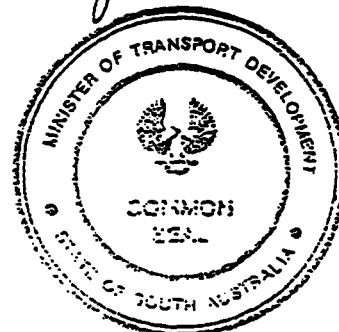
31.1 The proper law of this Deed shall be the law of South Australia and accordingly this Deed shall be governed by and construed in accordance with the laws of the said State.

31.2 The parties irrevocably covenant and agree for the benefit of the other that the courts of the State of South Australia shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Deed and for such purposes the parties irrevocably submit to the non-exclusive jurisdiction of such courts. Each party acknowledges that the courts of South Australia constitute the most convenient forum to hear and determine any such suits, actions, proceedings or disputes. Furthermore, each party waives any right it has to object to an action being brought in these courts, to claim that the action has been brought in an inconvenient forum or to claim that these courts do not have jurisdiction. The parties further agree that any suits, actions, disputes or other litigious proceedings brought in a Federal court shall be instituted in the Adelaide Registry of any such Federal court.

Executed unconditionally as a Deed on the 31st day of March 1993.

THE COMMON SEAL of the MINISTER
OF TRANSPORT DEVELOPMENT is
hereunto affixed in the presence of:

B. J. ...



Ann Newbery

THE COMMON SEAL of DISTRICT COUNCIL)
)
OF PORT ELLIOT AND GOOLWA was hereunto)
)
 affixed this 22nd day of March 1993)
)
 in the presence of:)

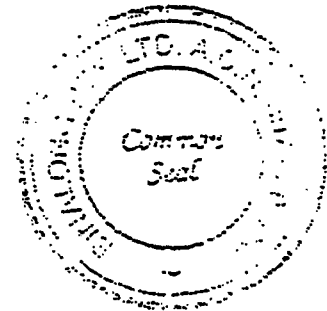
.....
 Mayor

.....
 District Clerk

THE COMMON SEAL of BINALONG PTY LTD)
)
 (A.C.N. 007 620 439) was hereunto affixed)
)
 in the presence of:)

.....
 Director

.....
 Director/Secretary



THE PROPOSAL**3.0 PROPOSAL**

This application is made pursuant to Section 51 of the Planning Act which is properly made given the Section 50 declaration over Hindmarsh Island and the bridge alignment site, and now that the EIS has been officially recognised. The following Site Plan illustrates the general disposition of uses for the subject land.

The application has drawn material from a large body of well-documented data prepared on behalf of the applicant company by its consultants, government and local government groups. The extensive documentation provided through the initial planning application process, the draft EIS and Supplement preparation, together with other specialist supporting reports requested by the Department of Environment and Planning from time to time, remains the relevant source documentation, except as refined by this particular Section 51 application detail.

It is not intended to describe the proposal in full detail given that this has been previously addressed with the earlier planning application, the EIS, Supplement and the Assessment Report. Nevertheless the following summary describes the proposal which is comprehensively detailed with the enclosed plans.

The application is for both land division and land use approvals for the whole of the development project albeit that it has an estimated 10 - 15 year development period.

The proposal is to enlarge the existing marina basin and associated facilities wholly owned and operated by the applicant and to provide a unique waterfront residential estate with lagoon waterways, creating an integrated development with a diversity of features focussed around water. In addition the proposal includes the construction of a bridge accessible from Brooking Street and the Hindmarsh Island causeway.

Facilities proposed and included within the development will comprise the following features:

- . Construction of a bridge linking Goolwa and Hindmarsh Island.
- . 1,150 wet berth moorings (including the 560 previously approved) within a marina basin covering some 20 hectares.
- . Dry stand facilities for approximately 500 boats and / or trailers together with overflow car parking.
- . Long term trailer and parking facilities.
- . Marine retail and services.
- . Commercial service facilities associated with the servicing, maintenance, construction and related activities typically associated with the boating requirements of a commercial marina, including travel lifts, Marina administration, sales and communication

facilities.

- . Educational and information services related to marine services and the park system associated with the Coorong.
- . Retail facilities to provide for the needs of the marina complex together with the demands generated by tourists, residents of the development and the residents of Hindmarsh Island.
- . Car parking and access roads within that commercial precinct and around the Marina basin.
- . 164 new allotments and residential dwellings grouped in a series of residential apartment style buildings adjacent the marina basin. These dwellings will have individual titles with encumbrances but will be constructed as part of the overall design.
- . 662 residential allotments with appropriate encumbrances within a unique lagoon environment, (approximately 30 hectares of water), with the majority of allotments being provided with absolute water frontage.
- . 50 country living estate allotments.
- . A resort village providing for a range of accommodation and recreation needs.

- . Nursery and bulk storage facility.
- . Marina construction and operations depot.
- . Sewage treatment works and water filtration plant and substantial woodlot.
- . Tavern and bottleshop.
- . Convention centre.
- . Motel with dining facilities.
- . Caretaker accommodation.
- . Boat launching ramps.
- . Extensive public reserves and landscaped buffer areas.
- . Yatch club facilities.
- . Water balancing tank.
- . Helipad and hanger.
- . Fuel dock and office.
- . Water circulation pump facilities.
- . Tourist observation lookout.

Development will be staged, however immediate commencement will involve;

- bridge design and construction completed and opened for the 1991 summer;
- excavation of portion of the marina basin extension adjacent the proposed commercial areas. The fill being required for bridge approaches, excess fill to be used to prepare hard stand - commercial and recreational areas;
- excavation of first residential lagoon estate comprising 149 allotments for immediate sale;
- 31 additional villa units and titles (17 included in earlier planning approval)
- establishment of the Marina construction and operations depot prior to excavation works;
- construction of retail shops and offices to accommodate the existing shops to be relocated from the proposed marina administration services building and for letting;
- construction of facilities for boat construction and services to enable existing activities to be relocated to enable effective upgrade of the Marina administration operations to be undertaken.

The following plans and details which are attached form part of this Section 51 Application.

LAND DIVISION PLANS

Pak Poy & Kneebone Pty. Ltd.

Job Number 88A 7091 sheets 1 to 21

BUILDING AND LAND USE PLANS

Walter Brooke & Associates Pty. Ltd.

Job Number 86.1512A sheets 1 to 17

SEWAGE TREATMENT WORKS

Pak Poy & Kneebone Pty. Ltd.

Job Number AFT 0172 sheet 1A

HINDMARSH ISLAND BRIDGE - PRELIMINARY DESIGN

Pak Poy & Kneebone Pty. Ltd.

Job Number 89A 7049C - 03B

LANDSCAPE PLANS

Land Systems Pty. Ltd.

Site Plan, Plant species and
13 concept sheets individually named

WOODLOT DETAIL

Land Energy Pty. Ltd.

Irrigation Management Services

Report - August 1989.

Collectively the enclosed schedules and drawings detail the proposal for which this development approval is now sought. As previously noted there is considerable data provided within the supporting documentation held by the applicant company previously supplied to the Department of Environment and Planning.

STAGE I

RESIDENTIAL ALLOTMENTSDRAWING & SHEET NOS.

	88A7091	1A, 2A
336 - 344		11
345 - 380, 382 - 387, 399 - 418		10
797 - 817, 773 - 775, 779 - 781 784, 785, 787, 788, 793 - 796		7 & 10
765, 768, 769, 771, 772, 831 - 845 818 - 830, 25 - 38		6

RESERVES

381, 388, 917, 904		11
913, 906		6
900 (Part lagoon)		7, 11

ROADS

"S"	6, 7, 8, 9, 10, 16, 17, 18
"X"	6, 7, 15, 16
"W" (Part front allots 25 -38)	6, 15
"Y"	6, 7
"D"	6, 7, 8, 9, 11, 12, 13, 14, 18, 20
"M"	10, 11, 14
"N"	11
"A"	3, 4, 5, 20

NON RESIDENTIAL ALLOTMENTS

911, 289	5
901, 967, 968	3, 4
903	3
905, 302, 271	6, 7
900 (Lagoon Excavation Part)	7, 11
901 (Marina Basin Part)	6, 19, 20

<u>BUILDINGS</u>	<u>PLAN NO.</u>
14 Residential Apartments (Villas)	86.1512A - P17
Sewage Treatment Works	AFT 0172 - C1A
Marina Construction & Operations Depot Buildings	86.1512A - P10
Marina Construction & Operations Depot Buildings	86.1512A - P11
Water Balancing Tank	86.1512A - P12
Boat Brokerage, Sales & Storage	86.1512A - P3
Dry Standing Control Building	86.1512A - P13
Undercover Boat Storage & Locker	86.1512A - P14
Marine Service & Boat Construction Facility	86.1512A - P15
Marine Dry Stand Servicing & Fuel Dock	86.1512A - P15
Marine Village (Stage I) - Shops	86.1512A - P16
Carport - Staff Carparking	86.1512A - P3 86.1512A - P4
Woodlotting	86.1512A - P1
Slipways	86.1512A - P2
Bridge & Approach Roads	89A7049C - C3

STAGE II

RESIDENTIAL ALLOTMENTSDRAWING & SHEET NOS

88A7091 1A, 2A

762 - 764, 766, 767, 770	6
776 - 778, 782, 783, 786, 789	7
419 - 442, 455 - 501, 790 - 792	10
451 - 453	14
758 - 760	10
444 - 447, 449, 450	11

RESERVES

916, 761, 443, 454	10
448	11
914, 610	4
913, 610	6
900 (Part lagoon)	10

ROADS

"o"	10
"p"	13

NON RESIDENTIAL ALLOTMENTS

902, 966	3, 4
976 (Heliport and Caretaker's Residence)	3

<u>BUILDINGS</u>	<u>PLAN NO.</u>
Resort Village	86.1512A - P7 86.1512A - P3 86.1512A - P9
Recreation Buliding	86.1512A - P10
Caretaker's Residence	86.1512A - P13
Heliport	86.1512A - P12
Marine Village (Stage II)	86.1512A - P2 86.1512A - P16
Motel	86.1512A - P6
Tavern Extensions & Convention Centre	86.1512A - P5
Marine Retail Services	86.1512A - P3 86.1512A - P4

STAGE III

RESIDENTIAL ALLOTMENTSDRAWING & SHEET NOS

	88A7091	1A, 2A
160 - 171		20
39 - 69		6, 16
137 - 159, 159A		19

RESERVES

909		20
906		16, 15
912		5

ROADS

"B"		20
"W" (Balance from allot 38)		16
"G", "E", "F" (Part to allot 136 frontage)		19

NON RESIDENTIAL ALLOTMENTS

136		19
901 (Marina Basin Part)		16
907		16

<u>BUILDINGS</u>	<u>PLAN NO.</u>
67 Residential Apartments (Villas)	86.1512A - P17
Yacht Club	86.1512A - P13

STAGE IV

RESIDENTIAL ALLOTMENTSDRAWING & SHEET NOS

	88A7091	1A, 2A
746 - 750		5
586, 588 - 609		9
585, 582, 587, 583, 584, 580, 502 - 538		10
321 - 324, 539 - 546, 551 - 564, 566 - 579		13
581, 335 - 329, 314 - 320		
548 - 550, 325 - 328		14
751 - 754		9
755 - 757		10
975		14

RESERVES

547, 565		13
745, 915		9
900 (Part lagoon)		13

ROADS

"Q"		13
"R"		9, 13

No specialised buildings are proposed in this stage.

STAGE V

RESIDENTIAL ALLOTMENTSDRAWING & SHEET NOS

	88A7091	1A, 2A
291 - 294, 303, 304, 288, 290, 295 - 301		13
308 - 313, 659 - 669, 636 - 657		
267 - 269, 251 - 266, 272 - 287, 670 - 706		12
707 - 723, 725 - 743, 246 - 250, 846, 847		9
211 - 245, 848 - 863		8
864 - 874, 200 - 210		5
610 - 635		9
70 - 76		16
77 - 91		17
92 - 125		18
126 - 135		19
972		13
969 - 971		12

RESERVES

658		13
724, 744		9
900	(Part lagoon)	9, 12, 13

ROADS

"E"		9, 19
"F"		18, 19
"H"		9, 18
"U"		18
"V"		9, 18
"T"		9

BUILDINGS

PLAN NO.

66 Residential Apartments (Villas)

86.1512A - P17

STAGE VI

RESIDENTIAL ALLOTMENTSDRAWING & SHEETING NOS

	88A7091	1A, 2A
918 - 936, 940 - 944		12
937 - 939, 945 - 962, 964 - 966, 973, 974		13

ROADS

Serving Country Living Estate.		12, 13
--------------------------------	--	--------

No specialised buildings are proposed in this stage.

MINOR ANCILLARY ITEMS TO MARINA USE

- . Area lighting
- . Security fencing to hard stand and various compounds
- . Signs - Directional, on buildings and awning (illuminated)
- . Navigation aids / lights
- . Radio communication aerials
- . Signal mast / flagpole
- . Boat lifting gantry
- . Shelter shed and gazebos
- . Recreational equipment
- . Shade cloth covering nursery shade houses
- . Pump sheds, equipment sheds and motor enclosures not exceeding 6 square metres
- . Fuel and water storage tanks
- . Satellite dish receivers
- . Weather beacons, wind socks and monitoring apparatus
- . Carparking in designated areas
- . Public conveniences.
- . Entry statement.

This data has been assessed in considerable detail over the past years and in particular during the EIS process. However they have not been included within this document as part of the formal applications.

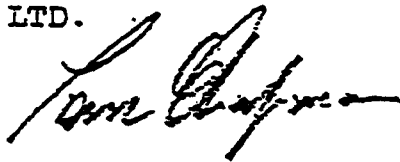
4.0 CONCLUSION

Whilst this Application is reasonably large in scale, it is imaginative and environmentally sustainable. After years of intensive and comprehensive planning and development, consultant study and negotiation it is appropriate for final approval be given pursuant to Section 51. We request that separate planning approval be given for each stage of the development so that we are given total approval and can then proceed to apply for titles as each stage is completed.

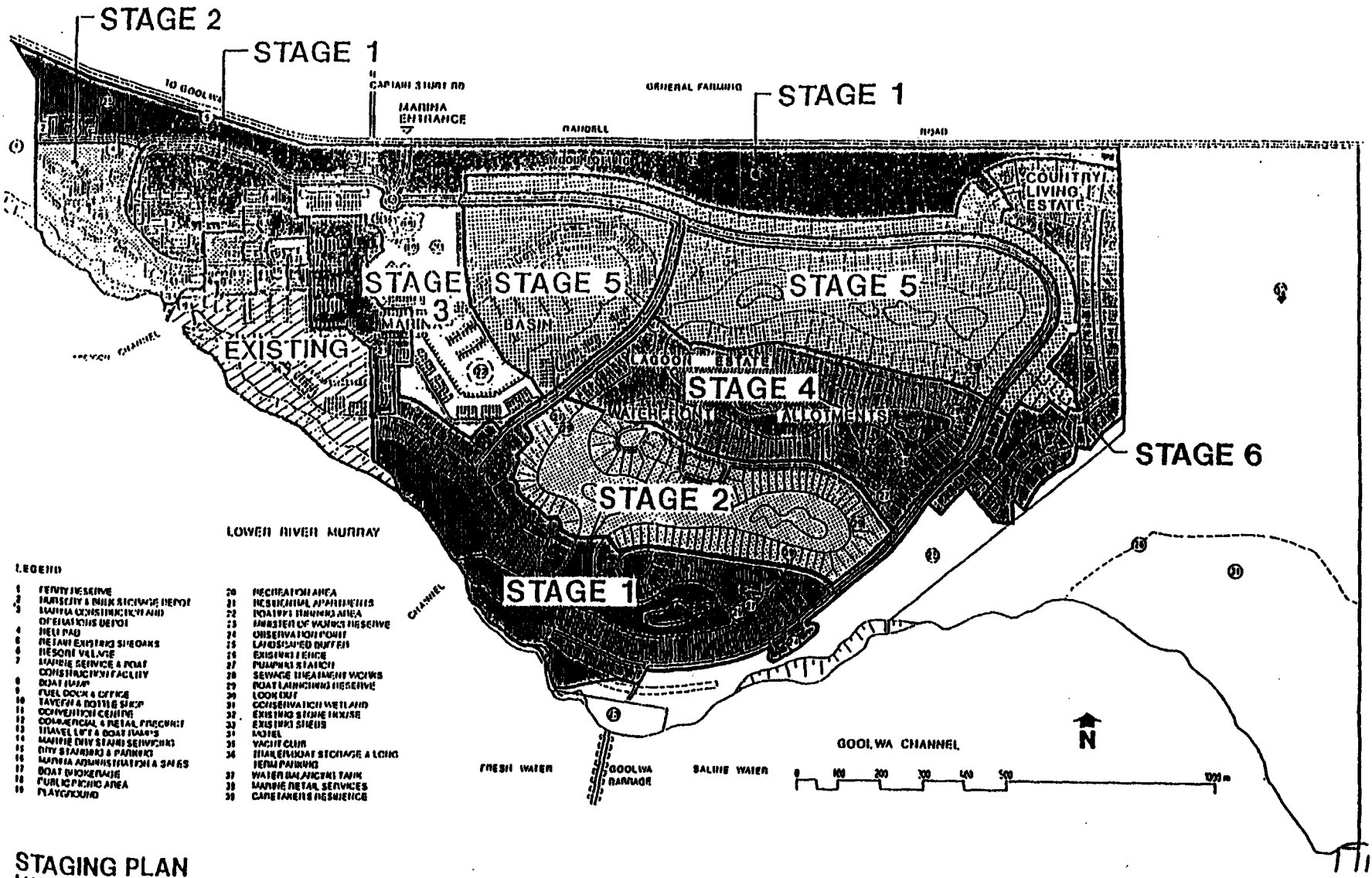
BINALONG PTY. LTD.

T.L. CHAPMAN.

DIRECTOR.



MARCH 1990



- LEGEND
- | | |
|---|-------------------------------|
| 1 FERRY RESERVE | 20 RECREATION AREA |
| 2 HARVEY & MARK RICHARDS DEPOT | 21 RESIDENTIAL APARTMENTS |
| 3 KAYAK CONSTRUCTION AND STORAGE DEPOT | 22 TOURIST PARKING AREA |
| 4 HELI PAD | 23 MASTER OF VAGUE RESERVE |
| 5 RETAIN EXISTING SHEDS | 24 OBSERVATION POINT |
| 6 RESORT VILLAGE | 25 LANDSCAPED BUFFER |
| 7 MARINE SERVICE & BOAT CONSTRUCTION FACILITY | 26 EXISTING FENCE |
| 8 BOAT LIFT | 27 PUMPING STATION |
| 9 FUEL DOCK & OFFICE | 28 SEWAGE TREATMENT WORKS |
| 10 TAVERN & BOTTLE SHOP | 29 BOAT LAUNCHING RESERVE |
| 11 COMMERCIAL & METAL PROCESSING | 30 LOCKS OUT |
| 12 TRAVEL LOT & BOAT PARKING | 31 CONSERVATION WETLAND |
| 13 MARINE DIV STAFF SERVICES | 32 EXISTING STONE WALLS |
| 14 CITY STAIRS & PARKING | 33 EXISTING SHEDS |
| 15 MARINA ADMINISTRATION & OFFICES | 34 KAYAK |
| 16 BOAT WORKSHOPS | 35 YACHT CLUB |
| 17 PUBLIC FISHING AREA | 36 TRAILERBOAT STORAGE & LIFT |
| 18 PLAYGROUND | 37 TERM PARKING |
| | 38 WATER BALANCING TANK |
| | 39 MARINE RETAIL SERVICES |
| | 40 CARETAKERS RESIDENCE |

STAGING PLAN
MARCH 1990

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

E. J. NEAL Governor