

South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

**SOUTH AUSTRALIAN PORTS (DISPOSAL OF MARITIME ASSETS)
ACT 2000**

No. 93 of 2000

[Assented to 21 December 2000]

An Act to provide for the disposal of assets of the South Australian Ports Corporation; to provide for the repeal of the South Australian Ports Corporation Act 1994; and for other purposes.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *South Australian Ports (Disposal of Maritime Assets) Act 2000*.

Commencement

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

Interpretation

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

"asset" includes—

- (a) an interest in real or personal property;
- (b) a contractual interest (including both contractual rights and contractual liabilities);
- (c) an interest in legal proceedings;

"Corporation" means the South Australian Ports Corporation;

"land" includes—

- (a) a subsurface stratum (which may terminate at a particular subsurface level or extend downwards without defined limit);
- (b) a stratum of airspace (which may terminate at a specified level or extend upwards without defined limit);

"lease" includes—

- (a) a sub-lease or other derivative of a lease;
- (b) hire of personalty;
- (c) a licence;

"maritime asset" means—

- (a) a port that was, at the commencement of this Act, vested in the Corporation; or
- (b) any asset vested in the Corporation associated with the operation of such a port;
- (c) any asset transferred to a State-owned company or other authorised transferee by a transfer order under this Act;

- (d) any other asset of the Corporation or the Crown that is, by direction of the Minister, to be regarded as a maritime asset;

"maritime liability" means a liability of the Corporation as at the commencement of this Act and includes a liability transferred to a State-owned company or other authorised transferee by a transfer order under this Act;

"memorandum of understanding" means a memorandum of understanding between the Government and the Maritime Union of Australia and the Australian Maritime Officers Union about the rights of employees in the event of their transfer to private employment under this Act;

"quarter" means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October in any year;

"sale/lease agreement"—see section 7;

"State-owned company" means—

- (a) a company incorporated under the *Corporations Law* in which all the issued shares are held by Ministers of the Crown or their nominees, nominated by the Minister by notice in the *Gazette* as a State-owned company for the purposes of this Act; or
- (b) a subsidiary of such a company within the meaning of the *Corporations Law*;

"subjacent land" means land that lies below the water in a harbor or port;

"transfer order"—see section 6.

Certain maritime assets to be treated as personal property

4. (1) The Minister may, by instrument in writing, determine that—

- (a) a maritime asset specified in the determination; or
- (b) maritime assets of a class specified in the determination,

are to be regarded as personalty even though annexed to land.

(2) The Minister may, by subsequent instrument in writing, vary or revoke a determination under this section.

(3) A transfer of title to land to which an asset to which a determination under this section applies is annexed does not operate to transfer title to the asset and the asset may be dealt with separately from the land.

Territorial application of Act

5. (1) This Act applies both within and outside the State.

(2) This Act applies outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

PART 2
DISPOSAL OF MARITIME ASSETS

Transfer of maritime assets to State-owned company with a view to sale of shares in the company

6. (1) The Minister may by instrument in writing (a transfer order)—

- (a) transfer a maritime asset to an authorised transferee; or**
- (b) transfer a maritime asset acquired by an authorised transferee under a transfer order to the Corporation or another authorised transferee.**

(2) Each of the following is an authorised transferee—

- (a) a State-owned company;**
- (b) a Minister, agency or instrumentality of the Crown.**

(3) A transfer order—

- (a) vests title to the asset to which the order relates in the transferee in accordance with its terms; and**
- (b) discharges that asset from any trust or other interest in favour of the Crown (except to the extent that any such interest may be expressly preserved under the terms of the transfer order).**

(4) A transfer of title under this section operates by force of this Act and despite the provisions of any other law or instrument.

(5) A transfer order may require the transferee to indemnify the Corporation against specified liabilities or liabilities of a specified class.

Disposal of maritime assets and liabilities

7. (1) The Minister may by agreement (a sale/lease agreement) with another (the purchaser) do one or more of the following:

- (a) transfer to the purchaser maritime assets or liabilities (or both);**
- (b) grant to the purchaser a lease, easement or other rights in respect of maritime assets;**
- (c) transfer to the purchaser shares in a State-owned company.**

(2) A sale/lease agreement—

- (a) creates or transfers title to, or an interest in or in relation to, an asset to which the agreement relates in accordance with its terms; and**
- (b) discharges an asset to which the agreement relates from any trust or other interest in favour of the Crown (except to the extent that any such interest may be expressly preserved under the terms of the agreement); and**
- (c) creates or transfers liabilities in accordance with its terms.**

(3) Without limiting subsection (2)(c), a sale/lease agreement may impose on the purchaser a liability to indemnify the Corporation or the Crown against specified liabilities or liabilities of a specified class.

(4) The creation or transfer of title to, or an interest in or in relation to, an asset under this section, and the creation or transfer of a liability under this section, operate by force of this Act and despite the provisions of any other law or instrument.

Terms of certain sale/lease agreements

8. (1) This section applies if a sale/lease agreement operates as a lease of a maritime asset.

(2) The agreement should contain terms under which—

- (a) the lessee is required periodically to submit a Strategic Development Plan giving specified details of how the lessee plans to develop the South Australian assets involved in the lessee's business; and
- (b) the risk of non-payment of rent (including amounts to be paid on the exercise of a right or option to renew or extend the lease) is addressed at the commencement of the lease by the provision of adequate security or other means; and
- (c) the lessor accepts no liability for, and provides no warranty or indemnity relating to, the lessee's use of the asset in trade or business; and
- (d) the lessee is to indemnify the lessor for any liability of the lessor to a third party arising from the lessee's use or possession of the asset; and
- (e) the lessee is required to have adequate insurance against risks arising from the use or possession of the asset; and
- (f) the lessee is required to ensure compliance with all regulatory requirements applicable to the use or possession of the asset; and
- (g) the lessor is entitled to terminate the lease for—
 - (i) non-payment of rent; or
 - (ii) any other serious breach that remains unremedied after the lessor has given notice of the breach and allowed a reasonable opportunity for it to be remedied; and
- (h) the lessor has a right or option, at the expiration or earlier termination of the lease, to acquire assets that form part of the business involving the asset at a reasonable market value (including, where the leased asset is land, improvements to the land).

(3) A sale/lease agreement that does not comply with subsection (2) is not invalid for that reason but when the agreement is laid before Parliament it must be accompanied by a report identifying the non-compliance and stating the reasons for it.

(4) A sale/lease agreement must contain a provision under which the lessee must give at least 12 months notice of the intended closure of a port or any part of it.

(5) A provision of a sale/lease agreement or a related instrument that deals with any of the following subjects has effect according to its terms and despite any law to the contrary:

- (a) the circumstances or conditions under which the lease may be terminated by the lessor or lessee; or
- (b) the pre-payment of amounts payable by way of rent and the retention of such amounts by the lessor; or
- (c) the continuance of the lease despite the occurrence of unintended or unforeseen circumstances; or
- (d) the continuance of the obligation to pay rent despite the occurrence of unintended or unforeseen circumstances; or
- (e) the amount payable in consequence of a breach of the lease.

(6) A sale/lease agreement may provide for the payment of civil penalties by the lessee in the event of specified breaches of the lease.

(7) A civil penalty is recoverable by the Crown as a debt (whether or not the breach has resulted in damage or loss).

(8) The Governor may, by proclamation, exempt the lessor under a sale/lease agreement (to an extent specified in the proclamation) from civil or criminal liabilities that the lessor might otherwise incur as owner or lessor of the land, or in relation to the use (or misuse) of the land.

(9) However, an exemption cannot be granted from liabilities that the lessor has to the lessee under the sale/lease agreement.

Orders, agreements etc to be laid before Parliament

9. (1) The Minister must have copies of a transfer order or a sale/lease agreement laid before both Houses of Parliament as soon as practicable after the order or agreement was made.

(2) The Minister must have a report on the probity of the processes leading up to the making of a sale/lease agreement prepared by an independent person engaged for the purpose and cause the report to be laid before both Houses of Parliament as soon as practicable after the making of the sale/lease agreement.

Division of land and related changes to the Development Plan

10. (1) The Minister may lodge an application for division of the land shown in Schedule 1.

(2) If a maritime asset consists of land (other than the land shown in Schedule 1), and the Minister considers it appropriate to divide the land into separate allotments with a view to—

- (a) disposal of the whole of the land in separate allotments; or
- (b) disposal of some of the allotments and retention of others,

the Minister may lodge an application for division of the land with the Registrar-General.

(3) An application under subsection (1) or (2) must be accompanied by a plan of the division and any other information or materials the Registrar-General may require.

(4) The Registrar-General must cancel any existing certificate of title for the land to which an application under subsection (1) or (2) relates, and issue new certificates for the allotments to be created by the division.

(5) No consent, approval, authorisation or certificate is required under the *Development Act 1993* for a division of land under this section.

(6) The Development Plan under the *Development Act 1993* is amended as set out in Schedule 2.

(7) If the Development Plan is amended before the amendments set out in Schedule 2 come into effect, the Minister may make consequential amendments to the amendments or the Development Plan as may be appropriate.

Government guarantee

11. (1) A Government guarantee has no application in relation to—

- (a) liabilities transferred by a transfer order or sale/lease agreement (unless the liabilities are transferred back to the Corporation); or
- (b) liabilities of a company that was a State-owned company before the shares in the company were transferred to a purchaser.

(2) In this section—

"Government guarantee" means—

- (a) a guarantee under section 28 of the *Public Corporations Act 1993*;
- (b) a guarantee or indemnity given by the Corporation;
- (c) a guarantee or indemnity under section 19 of the *Public Finance and Audit Act 1987*.

Application of proceeds of sale/lease agreement

12. (1) The proceeds of a sale/lease agreement must be applied for one or more of the following purposes:

- (a) defraying the cost of restructuring and disposal of maritime assets and the necessary preparatory work;
- (b) work to deepen, extend or clear a harbor or port or other work to develop or improve such a harbor or port;
- (c) improving services and facilities related to a port or infrastructure associated with a port;
- (d) retiring State debt;
- (e) making provision of up to \$100 million for the State's superannuation liabilities.

(2) If the proceeds are not applied immediately to a purpose mentioned above, they must be kept in a separate account at the Treasury, and any income from investment of the money standing to the credit of the account must be applied towards retiring State debt.

(3) An amount paid by way of security will not be regarded as proceeds of a sale/lease agreement for the purposes of this section.

**PART 3
STAFF****Transfer of staff**

13. (1) The Minister may, by order in writing (an **employee transfer order**)—

- (a) transfer employees of the Corporation to positions in the Department for Administrative and Information Services (DAIS); or
- (b) transfer employees who have been transferred to the positions in DAIS to employment by a purchaser under a sale/lease agreement or a company related to the purchaser.

(2) An employee transfer order takes effect on the date of the order or on a later date specified in the order.

(3) An employee transfer order may be varied or revoked by the Minister by further order in writing made before the order takes effect.

(4) An employee transfer order has effect by force of this Act and despite the provisions of any other law or instrument.

(5) A company and a purchaser are related for the purposes of this section if they are related bodies corporate within the meaning of the *Corporations Law*.

Employee transfer orders

14. (1) An employee transfer order—

- (a) must be consistent with the memorandum of understanding; and
- (b) may contain provisions to give effect to the memorandum of understanding.

(2) An employee transfer order may contain terms and conditions that, on the transfer of an employee to private employment, take effect as terms and conditions of the employee's contract of employment.

(3) Any such term or condition takes effect as a term or condition of the employee's contract of employment on the transfer of the employee to private employment but thereafter the term or condition is subject to variation or exclusion by agreement between the employer and the employee.

(4) On transfer of an employee to private employment under an employee transfer order, the Minister must make a lump sum payment to the employee in accordance with the memorandum of understanding.

(5) Termination of employment with the Corporation or DAIS under an employee transfer order does not constitute a redundancy or retrenchment.

PART 4
DISSOLUTION OF THE CORPORATION

Dissolution of the Corporation

15. (1) At any time after the transfer of assets from the Corporation commences, the Minister may, by notice in the *Gazette*, assume control of the Corporation.

(2) On the date of the Minister's assumption of control, the board of directors of the Corporation is dissolved and the Corporation's powers are vested in the Minister.

(3) After the Minister assumes control of the Corporation under this section, its functions are—

- (a) to administer efficiently and for the benefit of the State any assets for so long as they remain vested in the Corporation; and
- (b) to facilitate the disposal of assets under this Act; and
- (c) such of its former functions as, in the Minister's opinion, can be conveniently carried out by the Corporation.

(4) The Governor may, by proclamation, dissolve the Corporation.

(5) On the dissolution of the Corporation, any remaining assets and liabilities of the Corporation vest in the State.

Repeal of the South Australian Ports Corporation Act 1994

16. (1) The Governor may, by the proclamation dissolving the Corporation or by a later proclamation, fix a date for the repeal of the *South Australian Ports Corporation Act 1994*.

(2) On the date fixed under subsection (1), the *South Australian Ports Corporation Act 1994* is repealed.

PART 5
RECREATIONAL ACCESS TO PORTS

Recreational access agreements

17. (1) The Minister will, as a condition of entering into a sale/lease agreement with a particular purchaser, require the purchaser to enter into an agreement (a **recreational access agreement**) governing access by the public to land and facilities to which the sale/lease agreement applies.

(2) The purpose of a recreational access agreement is to preserve or enhance access by the public, free of charge, to land and facilities to which the sale/lease agreement applies.

(3) A recreational access agreement is made between—

- (a) the council for the area in which the land to which the agreement relates is situated; and
- (b) the purchaser.

(4) A recreational access agreement—

- (c) is binding on the occupiers for the time being of land to which it applies; and
- (d) may be amended from time to time by agreement between the relevant council and the current occupiers of that land.

(5) The relevant council must keep a copy of a recreational access agreement (and of any amendment to such an agreement) available for public inspection at its public office.

Enforcement of recreational access agreements

18. (1) The Supreme Court may, on application by an interested person, make orders for the enforcement of a recreational access agreement.

(2) The following are **interested persons**:

- (a) the council for the area in which the land to which the agreement relates is situated;
- (b) an occupier of land to which the agreement relates;
- (c) the South Australian Recreational Fishing Advisory Council Inc.;
- (d) a person specified or a person of a class specified by regulation.

**PART 6
STATUTORY EASEMENT****Statutory easement**

19. (1) A statutory easement exists in favour of the owner of port infrastructure if—

- (a) the infrastructure was, at the commencement of this section, situated on, above or under Corporation land; and
- (b) either—
 - (i) the owner then had no formal entitlement (in the form of a written easement, lease or licence) to maintain or operate the infrastructure on Corporation land; or
 - (ii) the infrastructure was then owned by the Corporation and ownership of the infrastructure becomes dissociated from ownership of the land in the course of the sale or disposal of the Corporations's assets.

(2) The easement is an easement in gross that does not depend on the existence of a dominant tenement.

(3) The easement entitles the owner—

- (a) to retain, maintain and operate the relevant infrastructure on, above or under the land affected by the easement;
- (b) to enter the land (in person or by his or her agents or employees) at any reasonable time, for the purpose of operating, examining, maintaining, repairing, modifying, replacing or removing the relevant infrastructure;
- (c) to bring on to the land any vehicles or equipment that may be reasonably necessary for any of the above purposes.

(4) A person exercising rights under the statutory easement must take reasonable steps—

- (a) to minimise damage to land or other property from work or activities carried out in the exercise of rights conferred by the statutory easement; and
- (b) to avoid unnecessary interference with land or other property, or the use or enjoyment of land or other property, from the exercise of rights under the statutory easement.

(5) The owner of land affected by the statutory easement may, by agreement with the owner of the infrastructure, execute an instrument—

- (a) conferring an easement that operates to the exclusion of the statutory easement so far as it affects that land; or
- (b) discharging the land from the statutory easement,

and on registration of the instrument under the *Real Property Act 1886* or the *Registration of Deeds Act 1935* the land is discharged from the statutory easement.

(6) An easement under this section need not be registered.

(7) However, the Registrar-General must, on application by the owner of the land or infrastructure, note the statutory easement on each certificate of title, or Crown lease, affected by the easement.

(8) An application under this section—

- (a) need not include a plan of the easement;
- (b) must include a schedule of all certificates of title and Crown leases affected by the easement.

(9) The Registrar-General is entitled to act on the basis of information included in the application and is not obliged to do anything to verify the accuracy of that information.

(10) In this section—

"port infrastructure" means fixtures at a port comprising a pipeline, conveyor belt or crane or any plant or equipment associated with the operation of a pipeline, conveyor belt or crane.

PART 7
THE PORT ADELAIDE CONTAINER TERMINAL MONITORING PANEL

Port Adelaide Container Terminal Monitoring Panel

20. A panel entitled the *Port Adelaide Container Terminal Monitoring Panel* is established.

Membership of panel

21. (1) The members of the panel are to be appointed by the Minister.

(2) The panel is to consist of—

- (a) a nominee of the Corporation; and
- (b) a nominee of Sea-Land (Australia) Terminals Pty Ltd; and
- (c) a nominee of the Australian Chamber of Shipping; and
- (d) a person who is in the opinion of the Minister a suitable person to represent the interests of shipping lines that use Port Adelaide but are not represented on the Australian Chamber of Shipping; and
- (e) a nominee of the South Australian Road Transport Association; and
- (f) a nominee of the Customs Brokers Council of Australia or the Australian Freight Forwarders Association; and
- (g) a nominee of the Importers Association of South Australia; and
- (h) a nominee of the Exporters Association of South Australia; and
- (i) a nominee of Business SA; and
- (j) a nominee of the Australian Customs Service; and
- (k) a nominee of the Australian Quarantine and Inspection Service; and
- (l) a nominee of the Maritime Union of Australia (who must be a person who works at the Port Adelaide container terminal); and
- (m) a nominee of the Maritime Officers Union of Australia (who must be a person who works at the Port Adelaide container terminal).

(3) A member is, subject to subsection (4), to be appointed for a term (at least 2 years) stated in the instrument of the member's appointment.

(4) A member appointed under subsection (2)(d) is to be appointed for a term, and on a basis, determined by the Minister that will allow for rotation between nominees of the various shipping lines that use Port Adelaide but are not members of the Australian Chamber of Shipping.

(5) A member of the panel may appoint an alternate member to act as a member of the panel when the member is unavailable to attend a meeting of the panel and, while so acting, the alternate member is to be regarded as a member of the panel.

Procedure of the panel

22. (1) The member appointed on the nomination of the Corporation (or an alternate member acting for that member) is to chair meetings of the panel.

(2) A quorum of the panel consists of—

- (a) the nominee of the Corporation (or the relevant alternate member); and
- (b) the nominee of Sea-Land (Australia) Terminals Pty Ltd (or the relevant alternate member); and
- (c) three other members.

(3) A decision carried by a majority of the votes cast by the members present at a meeting of the panel is a decision of the panel.

(4) Each member of the panel is entitled to one vote on a question arising for decision by the panel.

Exception

The following members (and their alternates) are not entitled to vote—

- (a) the nominee of the Corporation; and
- (b) the nominee of Sea-Land (Australia) Terminals Pty Ltd; and
- (c) the nominee of the Maritime Union of Australia; and
- (d) the nominee of the Maritime Officers Union of Australia.

Performance objectives and criteria

23. (1) The panel must establish performance objectives and performance criteria for the Port Adelaide container terminal.

(2) The performance criteria must be capable of objective measurement.

(3) The panel must notify the operator of the Port Adelaide container terminal of performance objectives and criteria established under this section.

(4) The panel may from time to time revise performance objectives and performance criteria for the Port Adelaide container terminal.

(5) Revised performance objectives or criteria do not take effect until a date fixed by the panel which must be at least 3 months after the panel gives the operator notice of the proposed new performance objectives or criteria.

Obligation to report

24. (1) The operator of the Port Adelaide container terminal must report to the panel within 1 month after the end of each quarter.

(2) The report must contain the information required by the panel to assess compliance with the performance objectives and performance criteria.

Notice of breach

25. (1) If the operator fails to meet performance criteria for a particular quarter, the panel may issue a notice of non-performance.

(2) If the panel issues notices of non-performance in relation to 2 successive quarters, the operator's rights to possession and control of the Port Adelaide container terminal are liable to termination.

**PART 8
LIMITATION ON CROSS OWNERSHIP****Limitation on cross-ownership**

26. (1) A person must not simultaneously have—

- (a) an interest in the container terminal at Outer Harbor, Port Adelaide, situated on the land designated as Title B in the plans in Schedule 1; and**
- (b) an interest—**
 - (i) in a container terminal in the Port of Melbourne, Victoria, that annually handles 25 per cent or more (by mass) of the container freight handled in that port; or**
 - (ii) in a container terminal in the Port of Fremantle, Western Australia, that annually handles 25 per cent or more (by mass) of the container freight handled in that port.**

(2) A person has an interest in a container terminal if the person—

- (a) has an interest in the land, buildings, structures or equipment that constitute the terminal; or**
- (b) has an interest in the operation or management of the container terminal; or**
- (c) has a right to share in profits derived from the operation of the container terminal.**

(3) A person is taken to have an interest in a particular asset if an associate of the person has an interest in that asset.

(4) Two persons are associates of each other if—

- (a) they are related bodies corporate within the meaning of the *Corporations Law*; or**
- (b) one is a body corporate and the other is a director or secretary of the body corporate; or**
- (c) they are members of the same partnership or joint venture; or**
- (d) one is a trustee and the other is a beneficiary of the same trust; or**
- (e) there is an agreement, arrangement or understanding (whether enforceable or not) under which—**
 - (i) one acts in accordance with the directions, instructions or wishes of the other; or**
 - (ii) if one or both are bodies corporate—a majority of the directors of one act in accordance with the directions, instructions or wishes of the other,**

(other than an agreement, arrangement or understanding entered into in the ordinary course of business for the supply of goods or services); or
- (f) the regulations declare them to be associates for the purposes of this Act; or**

(g) a chain of associations can (by applying any one or more of the above provisions) be traced between them through another person or another persons.

(5) If a person has an interest in assets in contravention of this section, the Minister may, by notice in writing given to the person or an associate of the person, require the divestiture of assets, within a reasonable period specified in the notice, to the extent necessary to ensure compliance with this section.

(6) If a person fails to comply with a notice under subsection (5), the Minister may, by subsequent notice in writing to the person, confiscate assets to the extent necessary to ensure compliance with this section.

**PART 9
MISCELLANEOUS****Provision of capital to State-owned company**

27. (1) Any one or more Ministers of the Crown may subscribe capital to a State-owned company.

(2) The Treasurer may, on conditions the Treasurer considers appropriate—

- (a) advance loan capital to a State-owned company; and
- (b) transfer non-pecuniary assets of the Crown to a State-owned company.

(3) Capital subscriptions and advances are, subject to any contrary direction by the Treasurer, to be paid out of the Consolidated Account (which is appropriated to the necessary extent).

(4) An instrument to give effect to a transaction under this section is exempt from stamp duty.

State-owned company to be instrumentality of the Crown

28. (1) A State-owned company formed for the purposes of this Act is to be regarded as an instrumentality of the Crown.

(2) However, the company ceases to be an instrumentality of the Crown when it ceases to be a State-owned company.

Contract or arrangement between Corporation and State-owned company

29. The Corporation may enter into a contract or arrangement with a State-owned company under which the State-owned company may make use of the services of employees or the facilities of the Corporation.

Amount payable by State-owned company in lieu of tax

30. (1) If the results achieved by a State-owned company from its operations over a designated period give rise to a presumptive liability for income tax, the company must, at such time as the Treasurer stipulates, pay to the Treasurer, for the credit of the Consolidated Account, a sum equal to the amount of the presumptive liability.

(2) The Treasurer may require a State-owned company to make other payments in respect of a designated period in lieu of taxes under the law of the State or the Commonwealth from which the company was exempt during the designated period because of the company's relationship to the Crown.

(3) In this section—

"date of divestiture" means the date the sale of shares in the State-owned company is completed;

"designated period" is a period of 12 months or less falling before the date of divestiture of the company—

- (a) extending from the date of the company's incorporation to the following 30 June or the date of divestiture of the company (whichever is first);
- (b) extending from 1 July in one year to 30 June in the next;

- (c) extending from 30 June to the date of divestiture of the company;

"**presumptive liability to income tax**", in relation to a State-owned company, means a liability for income tax that would have existed under the *Income Tax Assessment Act 1936*, or the *Income Tax Assessment Act 1997*, of the Commonwealth (as amended from time to time) if—

- (a) the company were liable to income tax under that Act; and
- (b) the designated period were a year of income within the meaning of that Act.

Validation of certain contracts etc

31. A contract, lease or licence purportedly made by the Corporation which would, but for this section, be invalid because it was made without the Minister's approval is valid and is taken to have been valid since its inception.

Interaction between this Act and other Acts

32. (1) A transaction under this Act is not subject to the *Land and Business (Sale and Conveyancing) Act 1994*.

(2) A transaction under this Act is not subject to the *Retail and Commercial Leases Act 1995*.

(3) A transaction under this Act is not subject to Part 4 of the *Development Act 1993*.

(4) However, the exemption conferred by subsection (3) does not extend to a development that is to be carried out under the terms or conditions of a sale/lease agreement.

Effect of things done or allowed under this Act

33. Nothing done, authorised or allowed by or under this Act, a transfer order or a sale/lease agreement—

- (a) constitutes a breach of, or a default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (c) constitutes a breach of duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a surety or other obligee wholly or in part from an obligation.

Stamp duty

34. (1) No stamp duty is payable in respect of—

- (a) a transfer order or a sale/lease agreement; or
- (b) a transaction effected by a transfer order or a sale/lease agreement.

(2) No obligation arises under the *Stamp Duties Act 1923* to lodge a statement or return, or to include information in a statement or return, relating to a transaction effected by a transfer order or a sale/lease agreement.

Land tax

35. Subjacent land leased under a sale/lease agreement or a related agreement is not liable to land tax.

Registration of transfer of land

36. (1) The Registrar-General must, on the application of a person to whom, or in whom, an interest in land is transferred or vested under this Act, register the transfer or vesting of the interest.

(2) An application under this section—

- (a) must be accompanied by any documents or other materials required by the Registrar-General; and
- (b) must be accompanied by a fee determined by the Registrar-General.

Non-application of Parliamentary Committees Act 1991

37. If land is leased to a purchaser under a sale/lease agreement under this Act, no work carried out by the purchaser in relation to that land is to be considered a public work for the purposes of the *Parliamentary Committees Act 1991* unless—

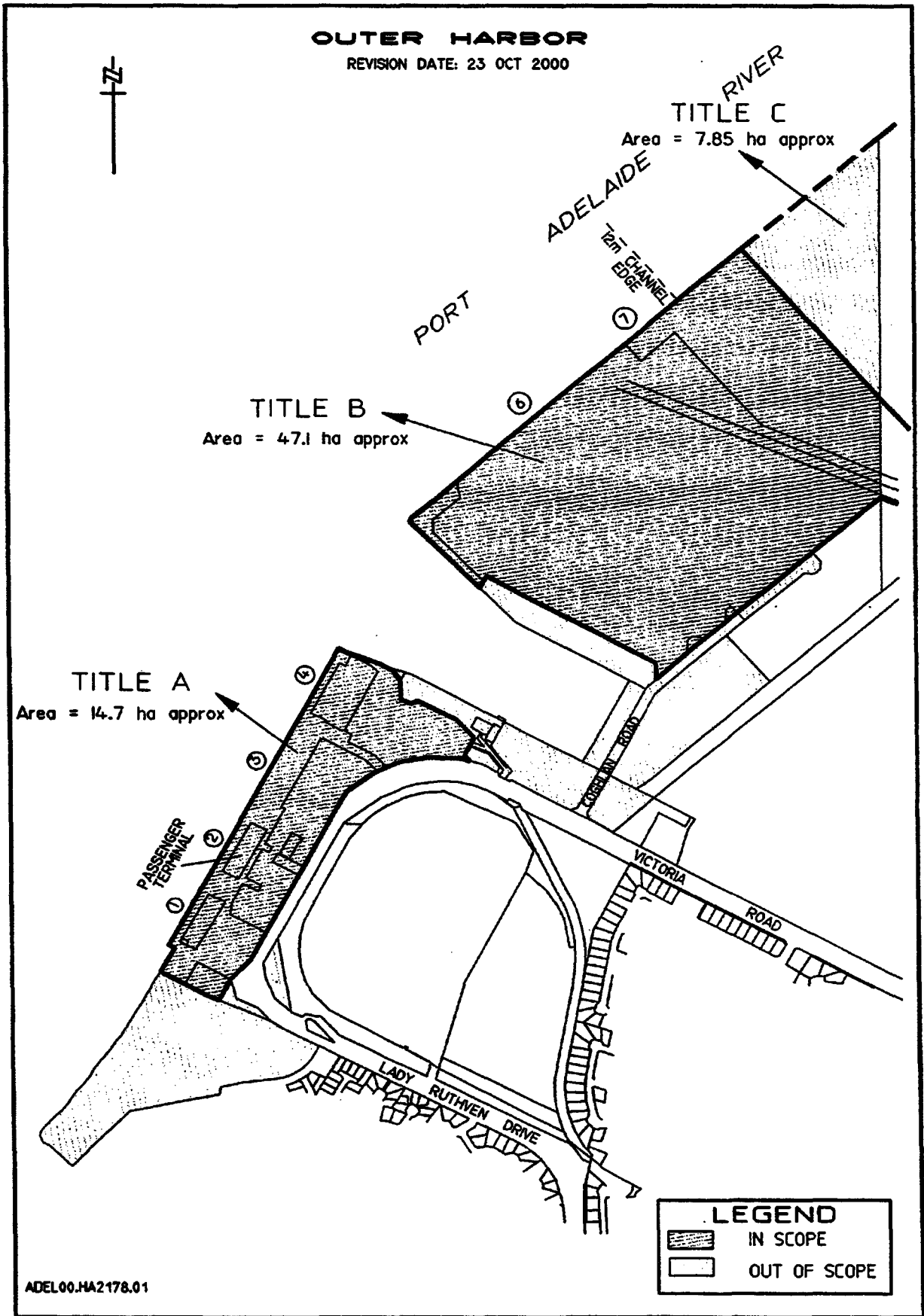
- (a) the total amount to be applied for the construction of the work will, when all stages of construction are complete, exceed \$4 million; and
- (b) the whole or part of the cost is to be met from money provided or to be provided by Parliament or a State instrumentality.

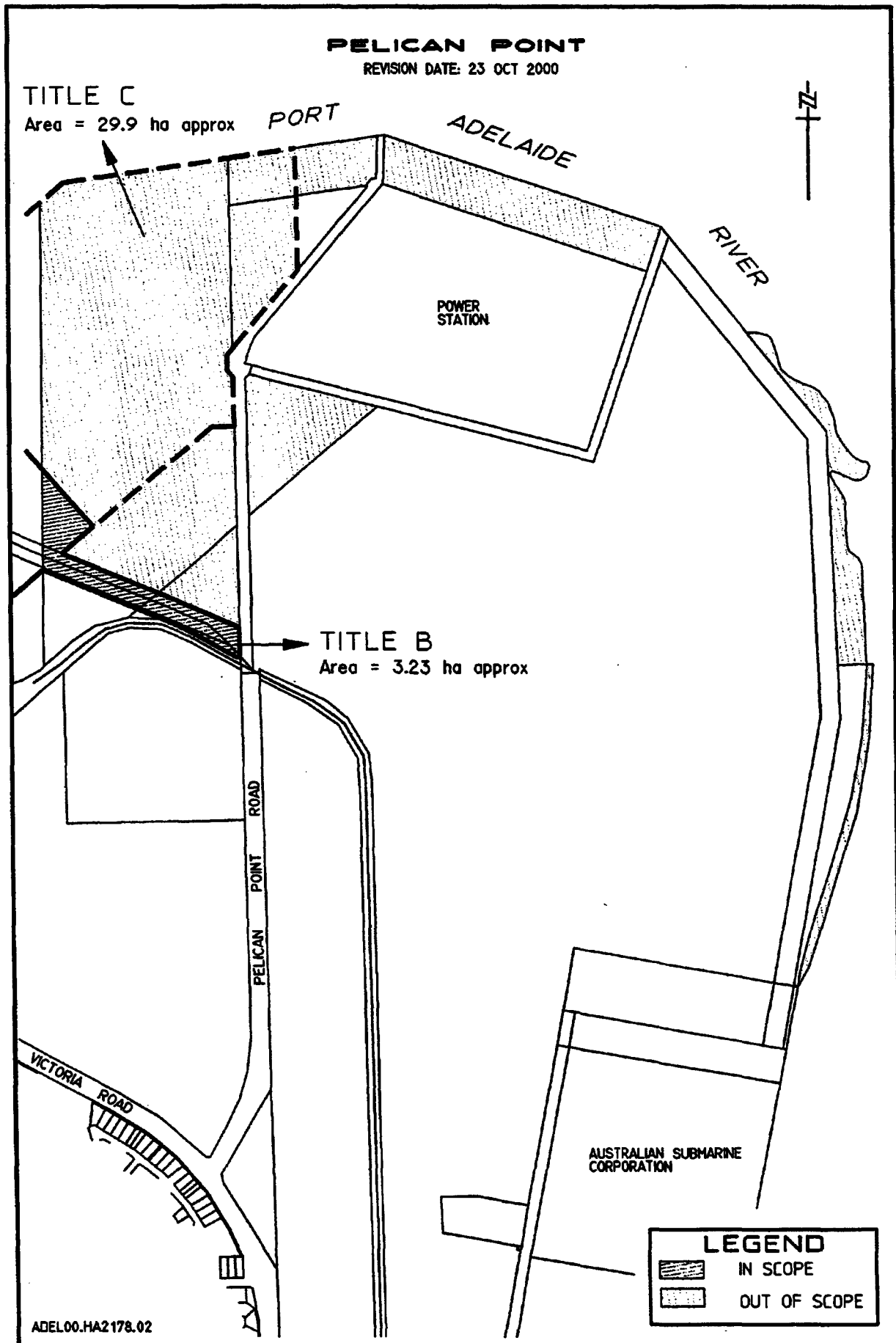
Regulations

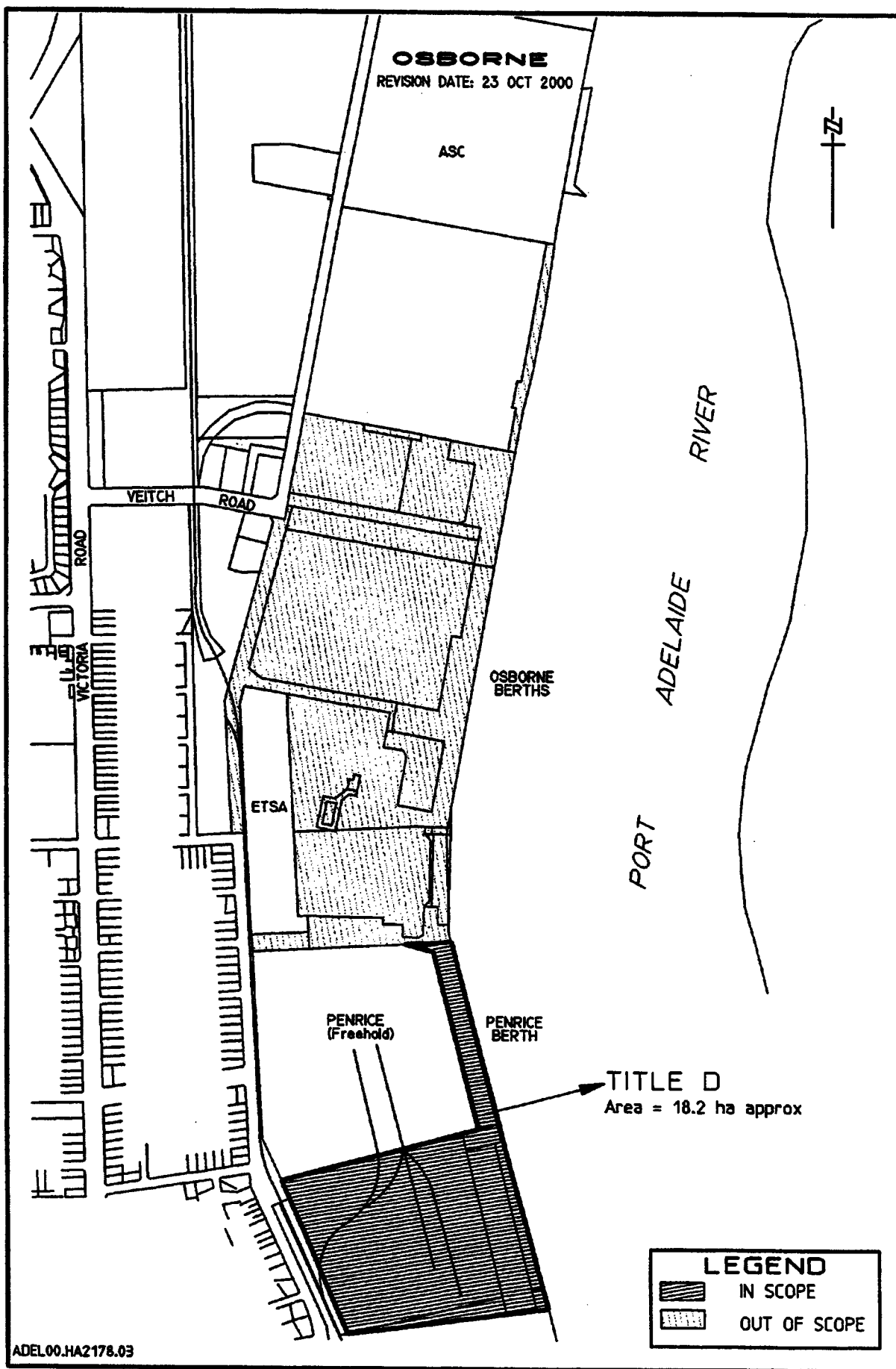
38. (1) The Governor may make regulations for the purposes of this Act.

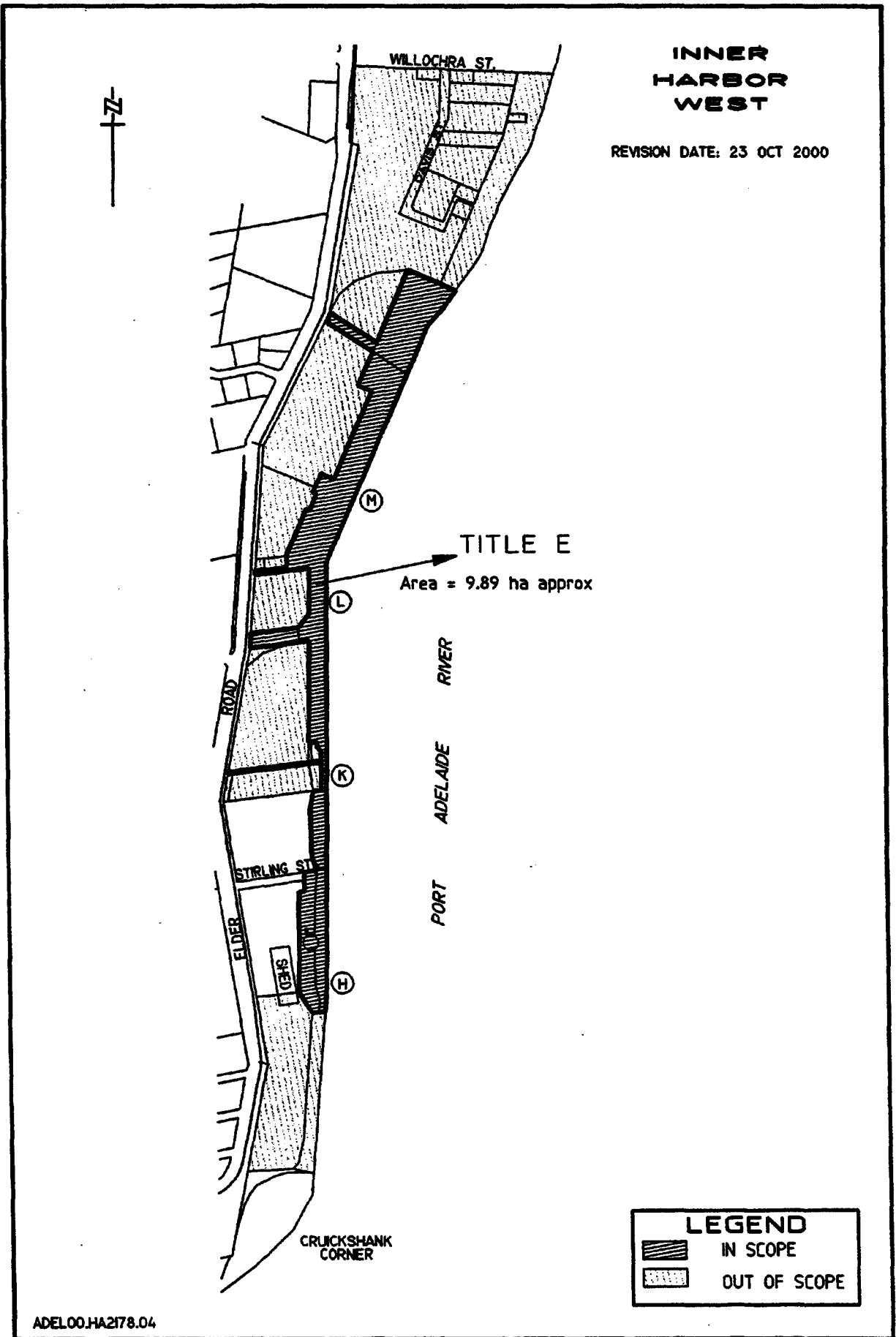
(2) The regulations may impose fines, not exceeding \$2 500, for offences against the regulations.

SCHEDULE 1
Division of Land

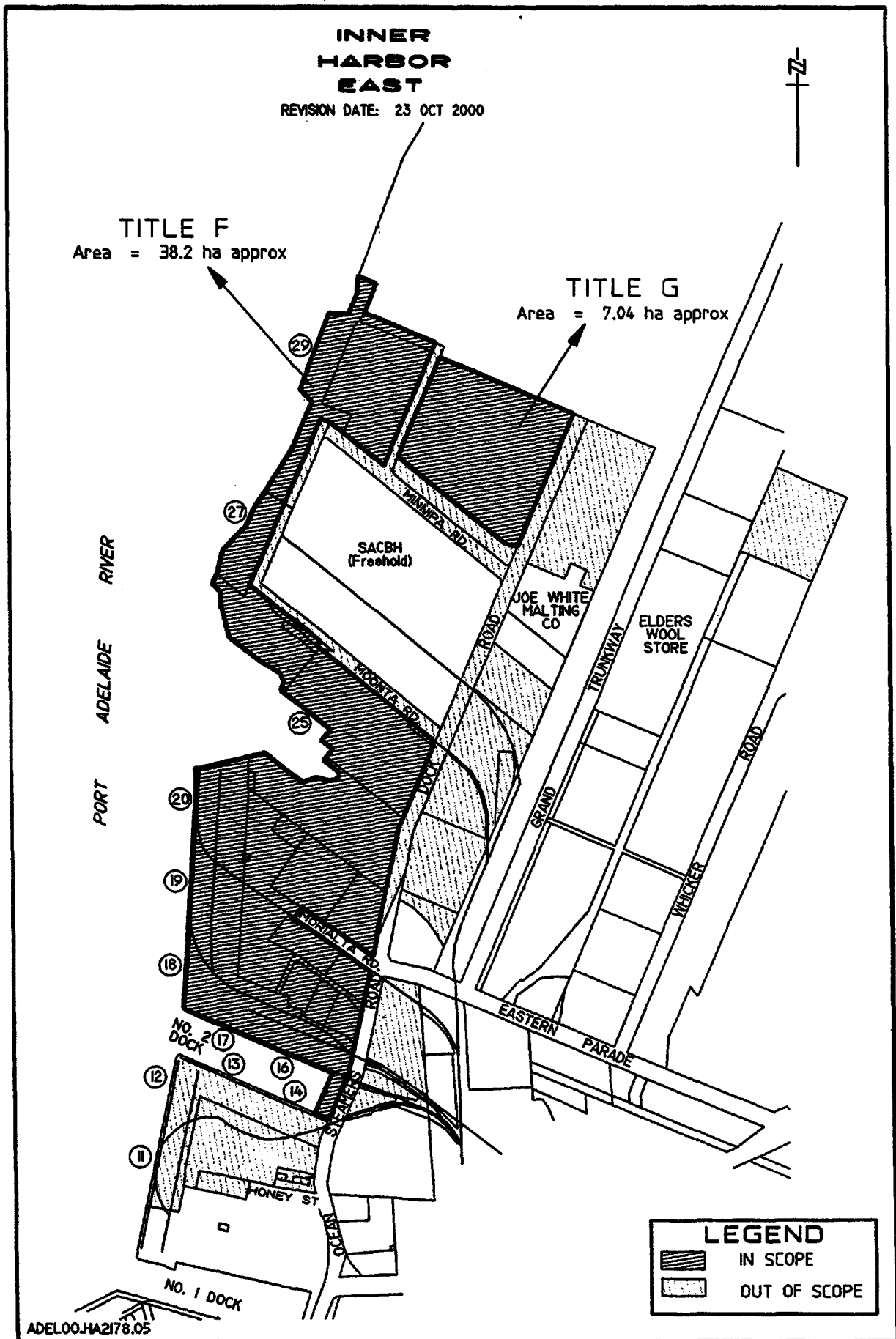


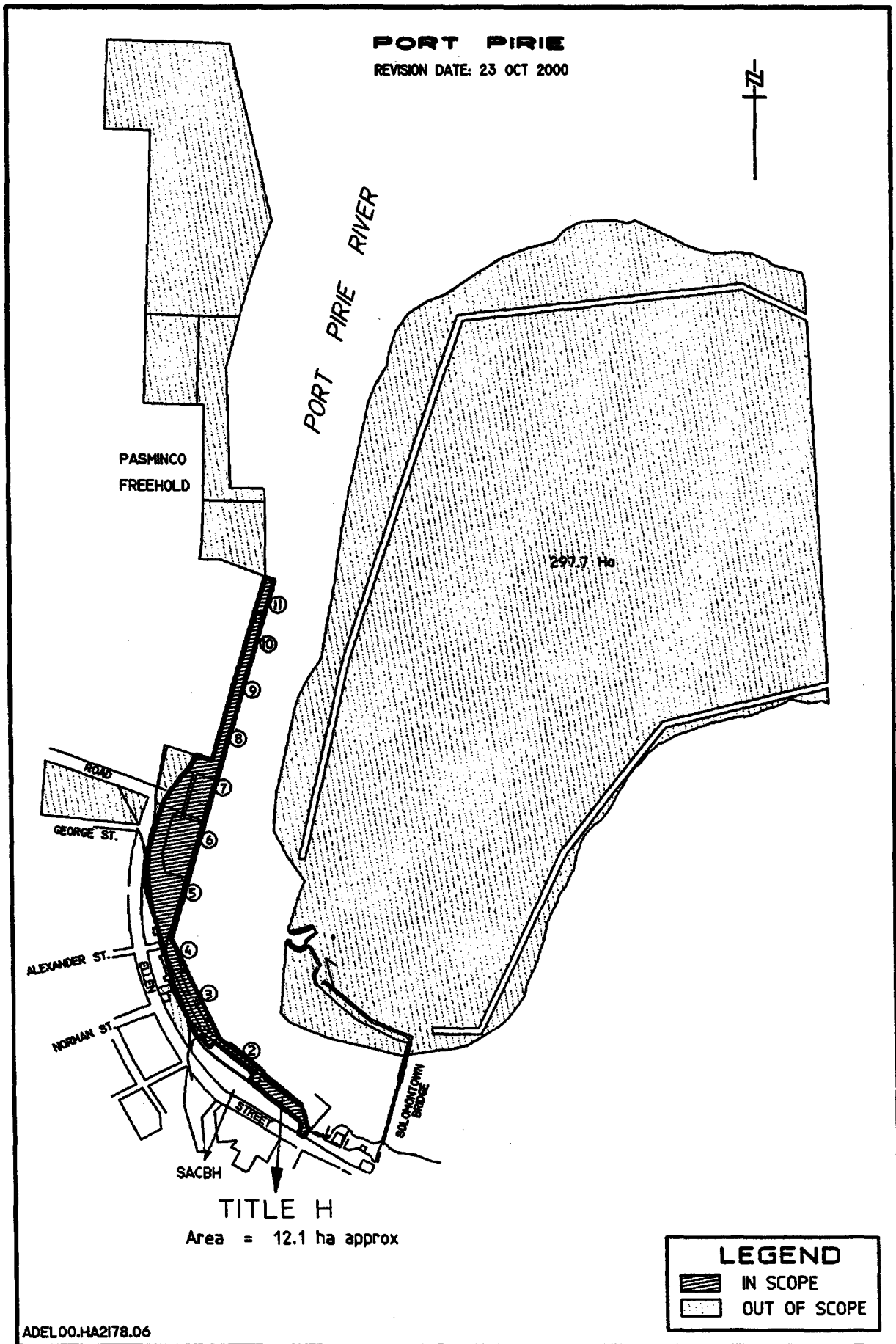




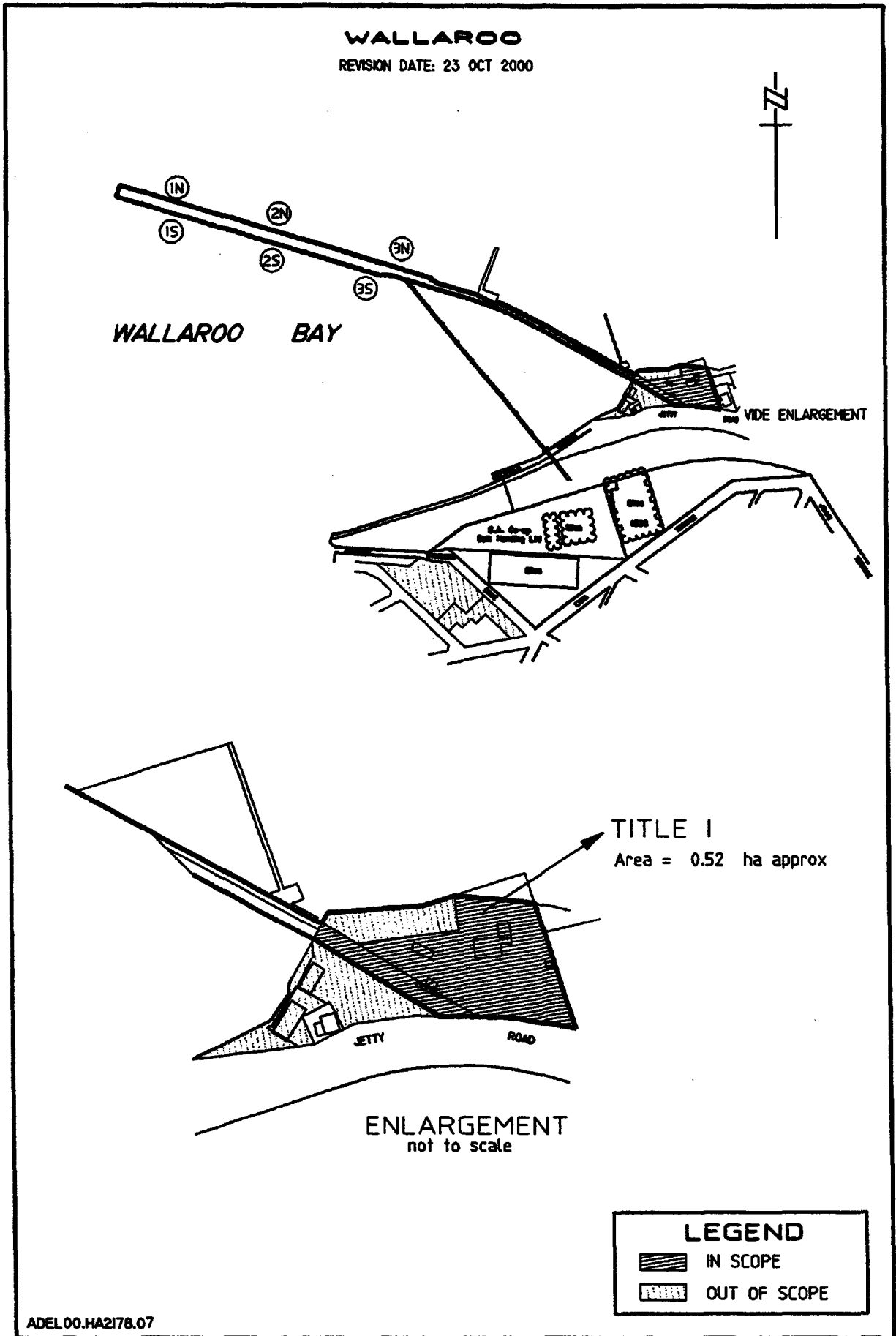


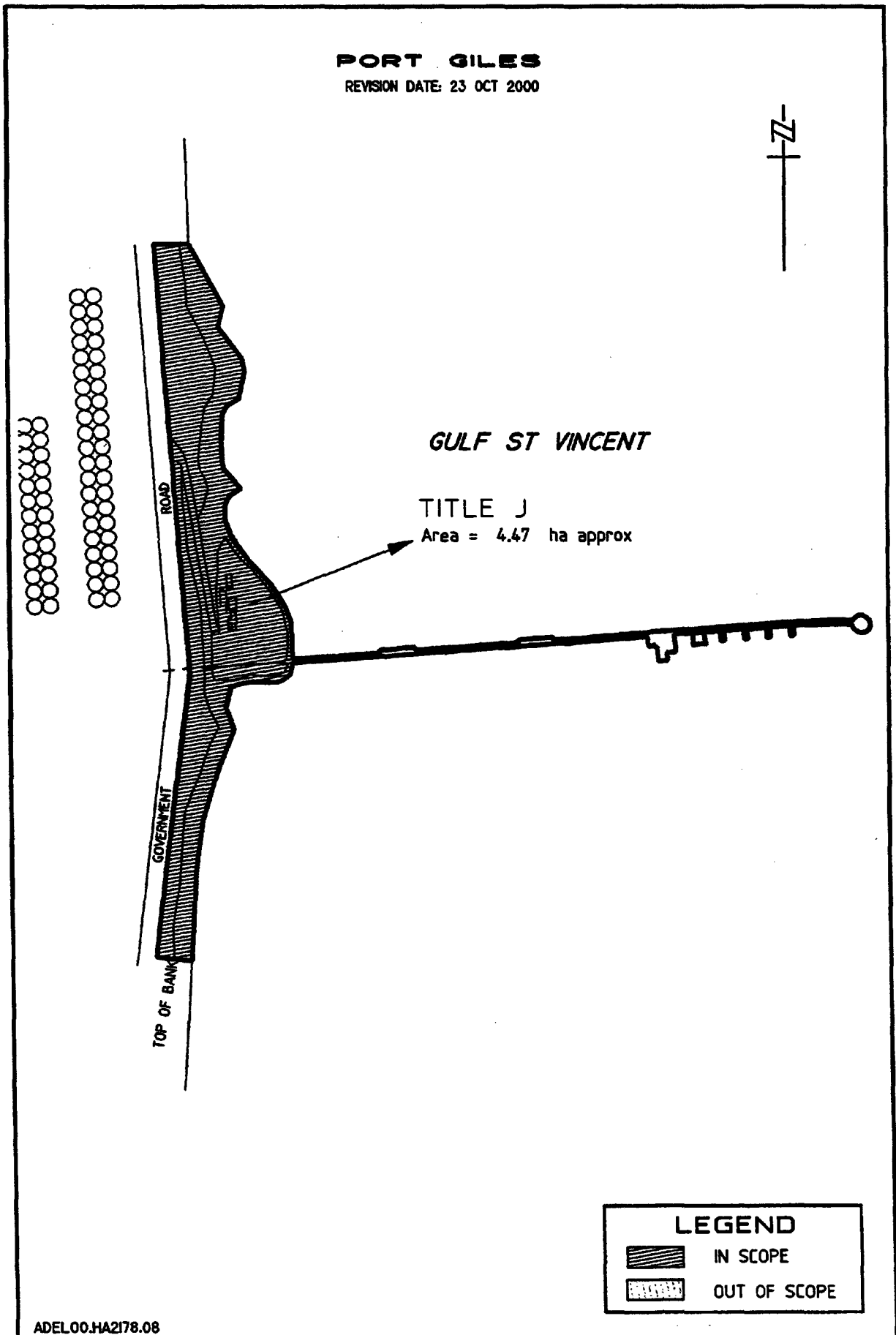
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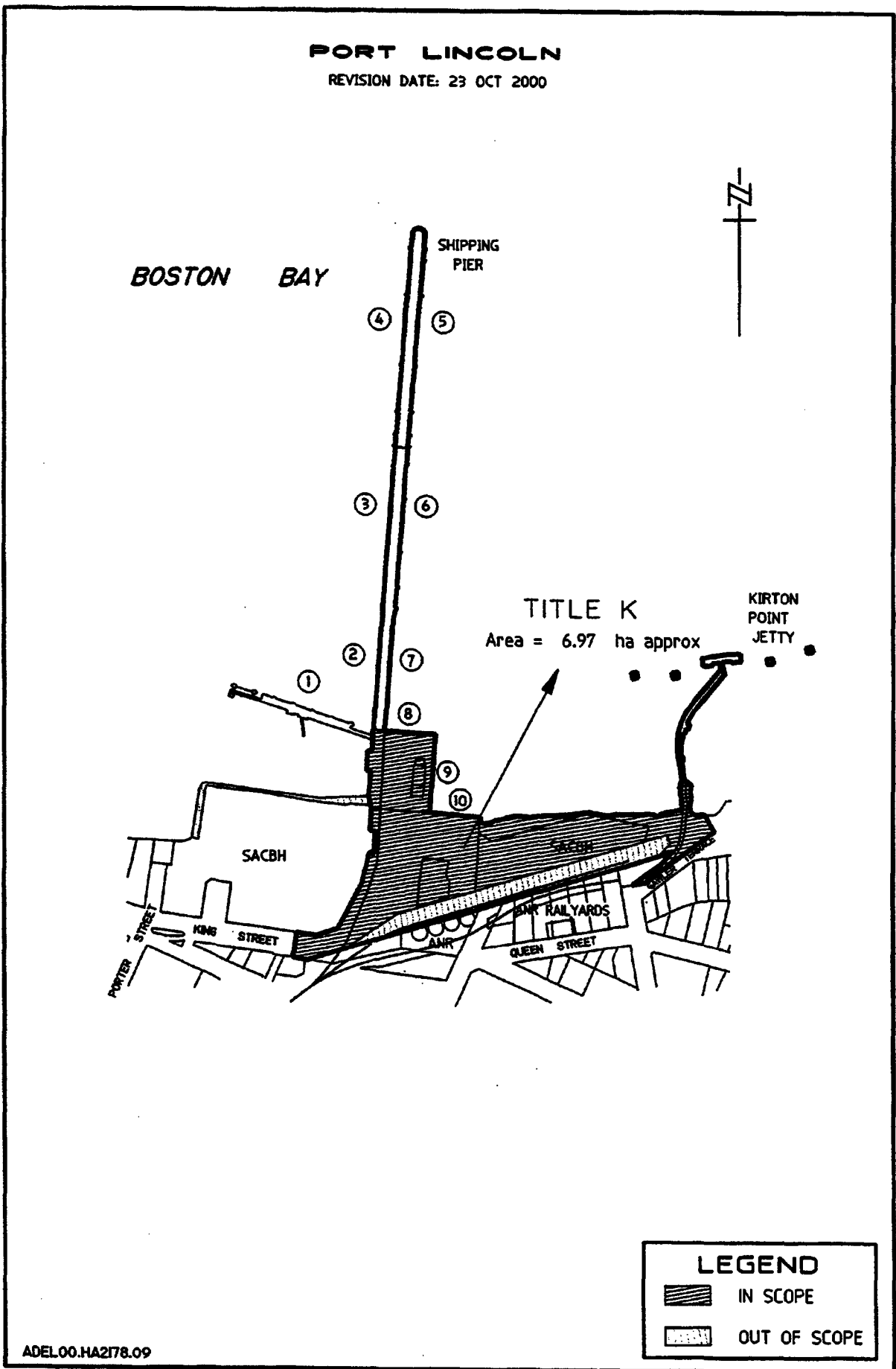


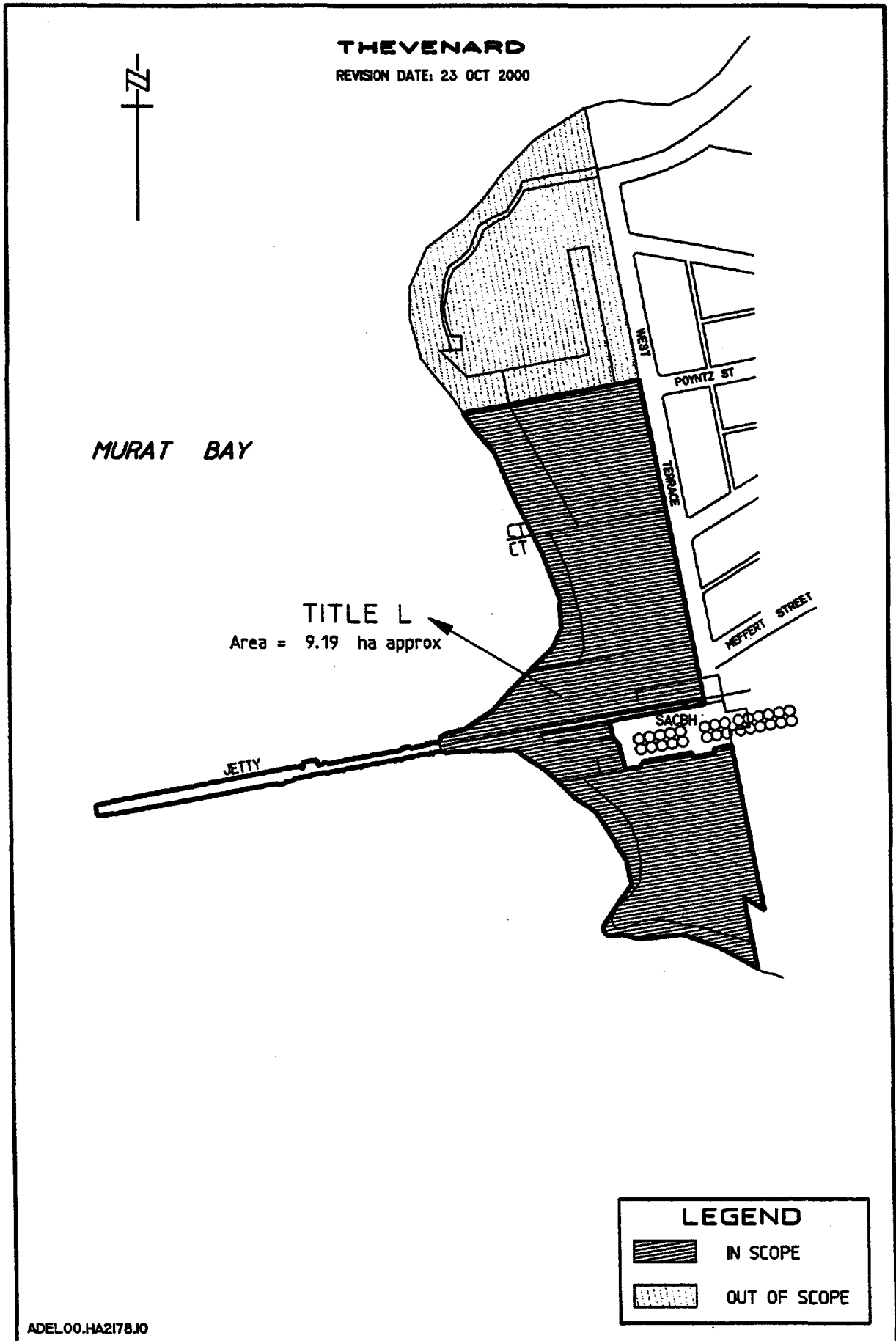


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SCHEDULE 2
*Amendments to Development Plan***Ceduna (DC) - 13 April 2000****(1) Council-Wide provisions**

- (i) In Objective 30 after the words "tourist accommodation" delete the words "and marinas" and insert the words ", marinas and ports".
- (ii) In Principle of Development Control 40 after the words "urban zone" insert the words "or to development associated with the operation of ports".
- (iii) In Principle of Development Control 42 after the words "reasons preclude" insert the words "or where operational requirements at ports renders this inappropriate".
- (iv) In Principle of Development Control 58 after the words "national importance" insert the words "; ports and port related functions".

(2) Residential Zone

- (i) Following Principle of Development Control 5, insert the following material as a new principle of development control:

"6 Residential development adjacent to the port activities at Thevenard should be designed and located taking into account the operation of the port."
- (ii) Re-number the following principles accordingly.

Land Not Within a Council Area (Coastal Waters) - 13 April 2000**(1) Council-Wide provisions**

- (i) In Objective 33 after the words "tourist accommodation" delete the words "and marinas" and insert the words ", marinas and ports".
- (ii) In Principle of Development Control 20 after the words "urban zone" insert the words "or to development associated with the operation of ports".
- (iii) In Principle of Development Control 22 after the words "reasons preclude" insert the words "or where operational requirements at ports renders this inappropriate".
- (iv) In Principle of Development Control 39 after the words "Mineral Deposits of State or National importance" insert on a new line the words "Ports and Port Related functions".
- (v) Following Principle of Development Control 48, insert a new heading "Public Notification".
- (vi) Following the new heading, insert the following material as a new principle of development control:

"49 All kinds of development, except those designated as non-complying, associated with port activities at the ports of:

 - Wallaroo
 - Thevenard
 - Port Pirie

- Port Lincoln
- Port Giles
- Klein Point

are assigned to Category 2 notification.”

Land Not Within a Council Area (Metropolitan) – 6 April 2000

(1) Council-Wide provisions

- (i) Following Objective 14, insert the following material:

“Objective 15: Development associated with port activities protected from inappropriate development.”

- (ii) Re-number the following Objectives accordingly.

- (iii) In Principle of Development Control 67 after the words “the foreshore” insert the words “except where operational requirements at ports renders this inappropriate”.

- (iv) In Principle of Development Control 68 after the words “urban zone” insert the words “or to development associated with the operation of ports”.

(2) Coastal Zone

- (i) In Principle of Development Control 7, the list of non-complying kinds of development, after the words “general industry” and “light industry”, insert the following material:

“(except where related to port functions)”.

- (ii) Following Principle of Development Control 7, insert a new heading “Public Notification”.

- (iii) Following the new heading “Public Notification” insert the following material as a new principle of development control:

“8 All kinds of development, except those designated as non-complying, associated with port activities at the Port of Adelaide (including Outer Harbor, Pelican Point, Osborne, Inner Harbor West and Inner Harbor East) are assigned to Category 2 notification.”

Port Adelaide Enfield (City) – 11 May 2000

(1) Council-Wide provisions

- (i) Following Objective 109, insert the following material as a new objective:

“Objective 110: Development associated with port activities protected from inappropriate development”.

- (ii) Re-number the following objectives accordingly.

- (iii) In Principle of Development Control 266 after the words “the foreshore” insert the words “except where operational requirements at ports renders this inappropriate”.

- (iv) In Principle of Development Control 267 after the words “urban zone” insert the words “or to development associated with the operation of ports”.

(2) Industry (Deferred Port) Zone

- (i) Delete the Industry (Deferred Port) Zone.

(3) Industry (Port) Zone

- (i) Delete the Industry (Port) Zone, and insert the material contained in Attachment A as replacement.

(4) MOSS (Conservation) Zone

- (i) In the Introduction text after the words "Maps PtAdE/" insert "4, 6" immediately before "9".
- (ii) In the Desired Future Character Statement text after the words "Development within this" insert the words "portion of the".
- (iii) In the Desired Future Character Statement text after the words "education and recreation" insert the following material as a new paragraph:

"Mutton Cove is located on the western side of the Port River, approaching Pelican Point and is the only remnant of the tidal creek system remaining on the Le Fevre Peninsula. Although substantially degraded, it is a haven for a wide diversity of both Australian and migratory Wading birds and continues to support a substantial floral and fauna bio-diversity. Development within this portion of the Zone should assist in the rehabilitation of Mutton Cove and accommodate an open space linkage to the Moss (Buffer) Zone to the west. "

- (iv) In Principle of Development Control 12 (e) after the words "structures at" insert the words "Mutton Cove,".
- (v) In Principle of Development Control 13 (g) after the words "structures at" insert the words "Mutton Cove,".

(5) In the MOSS (Buffer) Zone

- (i) In the Introduction text delete the words "Maps PtAdE/3 and 5" and insert "Maps PtAdE/3, 4, 5 and 6".
- (ii) In the Desired Future Character Statement section delete the whole of the text and insert the following material as replacement:

"The Moss (Buffer) Zone should provide a buffer between the residential areas of North Haven and the port facilities and industries on the northern portion of the Le Fevre Peninsula. The purpose of the buffer is to maintain the amenity of nearby residential areas whilst facilitating the ongoing operations of the port and related industries. Land located to the south and west of Victoria Road should accommodate a golf course. Land located to the north and east of Victoria Road should be developed as a densely planted but functional open space to screen the port activities and industrial land."

- (iii) In Objective 2 after the words "primary activity" insert the words "south of Victoria Road".
- (iv) Following Principle of Development Control 4 insert the following material as a new principle of development control:
 - "5 An open space linkage of a minimum width of 100 metres should be provided to the Moss (Conservation) Zone at Mutton Cove."
- (iv) Renumber the following principles accordingly.

- (6) Delete Maps PAdE/1 (Overlay) Part A, PAdE/1 (Overlay 4), PAdE/3, 4, 6, 8, 9, 12, 13 and 57, and insert the material contained within Attachment B.

Port Lincoln (City) – 16 September 1999

(1) Council-Wide provisions

- (i) In Objective 26 after the words “tourist accommodation” delete the words “and marinas” and insert the words “, marinas and ports”.
- (ii) In Principle of Development Control 69 after the words “urban zone” insert the words “or to development associated with the operation of ports”.
- (iii) In Principle of Development Control 71 after the words “reasons preclude” insert the words “or where operational requirements at ports renders this inappropriate”.
- (iv) In Principle of Development Control 88 after the words “Mineral Deposits of State or National importance” insert on a new line the words “Ports and Port Related functions”.

(2) Lincoln Harbor (Area 6)

- (i) In the heading “Principle of Development Control” delete the word “Principle” and insert the word “Principles” as replacement.
- (ii) Following Principle of Development Control 1, insert a new heading “Public Notification”.
- (iii) Following the new heading insert the following material as a new principle of development control:
“2 All kinds of development associated with port activities, on an allotment with water frontage, are assigned to Category 2 notification in the Lincoln Harbor (Area 6).”

Port Pirie (City) – 16 March 2000

(1) Council-Wide provisions

- (i) In Objective 43 after the words “tourist accommodation” delete the words “and marinas” and insert the words “, marinas and ports”.
- (ii) In Principle of Development Control 130 after the words “urban zone” insert the words “or to development associated with the operation of ports”.
- (iii) In Principle of Development Control 132 after the words “reasons preclude” insert the words “or where operational requirements at ports renders this inappropriate”.
- (iv) In Principle of Development Control 149 after the words “Mineral Deposits of State or National importance” insert on a new line the words “Ports and Port Related functions”.

(2) Commercial 3 Zone

- (i) In Objective 1 after the words “commercial activities,” insert the words “port activities,”.
- (ii) In Principle of Development Control 1 after the words “Parking Area” insert the words “Port Activities”.

- (iii) Following Principle of Development Control 2, insert the following material as a new principle of development control:
- “3 The water frontage of the Zone should accommodate port activities including bulk cargo handling facilities, trans-shipment yards and associated servicing activities.”
- (iv) Re-number the following principles accordingly.
- (v) Following Principle of Development Control 9, insert a new heading “Public Notification”.
- (vi) Under the new heading, insert the following material as a new principle of development control:
- “10 All kinds of development associated with port activities, east of Ellen Street, are assigned to Category 2 notification in the Commercial 3 Zone.”

Wallaroo (CT) – 23 March 2000**(1) Council-Wide provisions**

- (i) Following the explanatory material for Objective 6 insert the following material:
- “Port Development**
- Objective 7: Port operations not jeopardised by inappropriate development or activities.“
- (ii) Re-number the following Objectives accordingly.
- (iii) In Objective 24 after the words “tourist accommodation” delete the words “and marinas” and insert the words “, marinas and ports”.
- (iv) Following Principle of Development Control 15 insert the following material as a new principle of development control:
- “Port Development**
- 16 Development in proximity to port facilities should not adversely impact upon the ongoing operations of the port.“
- (v) Re-number the following principles accordingly and adjust cross references where required.
- (vi) In Principle of Development Control 70 after the words “urban zone” insert the words “or to development associated with the operation of ports”.
- (vii) In Principle of Development Control 72 after the words “reasons preclude” insert the words “or where operational requirements at ports renders this inappropriate”.
- (viii) In Principle of Development Control 89 after the words “Mineral Deposits of State or National importance” insert on a new line the words “, Ports and Port Related functions”.

Yorketown (DC) – 23 March 2000**(1) Council-Wide provisions**

- (i) In Objective 30 after the words “tourist accommodation” delete the words “and marinas” and insert the words “, marinas and ports”.

- (ii) In Principle of Development Control 87 after the words "urban zone" insert the words "or to development associated with the operation of ports".
- (iii) In Principle of Development Control 89 after the words "reasons preclude" insert the words "or where operational requirements at ports renders this inappropriate".
- (iv) In Principle of Development Control 106 after the words "Mineral Deposits of State or National importance" insert on a new line the words ", Ports and Port Related functions".

ATTACHMENT A

Port Adelaide Enfield (City)

INDUSTRY (PORT) ZONE

Introduction

The objectives, proposals and principles of development control that follow apply in the Industry (Port) Zone shown on Maps PAde/3, 4, 6, 8, 9, 12 and 13. They are additional to those expressed for the whole of the council area.

OBJECTIVES

- Objective 1:** A Zone comprising land for the long-term growth of the port and accommodating activities dependent on a port-side location.
- Objective 2:** The selective use of land in a manner commensurate with the strategic and economic State significance of the Zone for the handling of export and import commodities.
- Objective 3:** Land with direct water frontage being developed to accommodate only those activities which rely upon that water frontage.

The waterfront land encompassing Outer Harbor, the northern portion of the Le Fevre Peninsula and the northern portion of the Port River north of Inner Harbor East is to accommodate immediate and long-term port activities. It is important that development within the Zone, and particularly on that land with direct water frontage, not adversely affect the ongoing strategic and economic function and role of the port as the States major import/export/transshipment facility. Accordingly, port related activities which do not require a direct water frontage should be sited on the inland portions of the Zone.

PRINCIPLES OF DEVELOPMENT CONTROL

- 1 Development undertaken in the Industry (Port) Zone should be, primarily, activities dependent on a port-side location.
- 2 Only those activities which require direct frontage to the water should be located on the water fronting portions of the Zone. These activities are limited to those functions of the port involving waterborne vessels and/or the movement of products or items from the water to the land and vice versa and may include: gantry and loading structures; wharf facilities and berthing operations; harbor installations and navigational aids.
- 3 Port activities which require location immediately adjacent the activities detailed in principle 2 include:
 - transshipment facilities
 - customs operations
 - intermodal cargo transfer facilities
 - container terminals
 - bunker facilities
 - cargo handling facilities
 - storage areas used for the temporary holding of port cargo
 - ship repair facilities
 - offices associated with port activities where the office is ancillary to the port activity
- 4 Port related activities which should be sited inland include those activities which are engaged in the transporting, processing, making, storing or handling of products or items to be, or which have been, transported by ship.

- 5 Land within 600 metres of the water front boundary of the Zone at Le Fevre Peninsula, and within 350 metres of the water front boundary of the Port River portion of the Zone at Inner Harbor East, is to primarily accommodate the range of activities detailed in principle 3.
- 6 Land beyond 600 metres of the water front boundary of the Zone at Le Fevre Peninsula, and beyond 350 metres of the water front boundary of the Port River portion of the Zone at Inner Harbor East, should primarily accommodate the range of activities detailed in principle 4, along with other industrial activities.
- 7 Development adjoining the waterfront should incorporate, where possible, formal landscape plantings such as lawns and large trees to screen unsightly storage areas otherwise open to public view and enhance the appearance of the development and the waterfront and provide an amenity for employees on the site.
- 8 Buildings and structures should be constructed of good quality materials and maintained in good repair and condition.
- 9 Outdoor storage and/or work areas should where possible be screened from public view.
- 10 Development should not pollute the water of Port Adelaide River. Development associated with the Port of Adelaide at Outer Harbor that is within 120 metres of the southern boundary of the Zone, identified as the line "AB" on Enlargement Map PAdE/57, should not unreasonably impact on the residential areas within the locality through noise, traffic, fumes, dust, vibration, or any other harmful or nuisance-creating impact.
- 11 Special industry should be located, designed and developed such that the industry present no danger to adjoining industry or any detrimental impact on nearby residential development or public open space.
- 12 The extent of port related activities and other industrial activities should not jeopardise the attainment of the Objectives of the Zone.
- 13 Land located east of Pelican Point Road on the northern portion of the Le Fevre Peninsula should not be developed until an open space linkage of a minimum width of 100 metres is defined between the MOSS (Conservation) Zone to the east and the MOSS (Buffer) Zone to the west.
- 14 The following kinds of development are complying in the Industry (Port) Zone subject to compliance with the conditions set out in Table PAdE/1, where applicable:

Berthing Operation	Harbor Installation
Coastguard Station	Navigational Aid
Fire Station	Wharf Facilities
Gantry and Loading Structures	

- 15 The following kinds of development are non-complying in the Industry (Port) Zone:

Abattoir	Junk Yard
Agriculture	Landfill that constitutes solid waste disposal required to be licensed as a waste depot under the Environment Protection Act 1993
Amusement Machine Centre	
Amusement Park	
Auction Room	Motel
Billiard Saloon	Motor Race Track
Boarding House	Motor Showroom
Bowling Alley	Multiple Dwelling
Builder's Yard	Prescribed Mining Operations
Bus Depot	Primary School
Caravan Park	Private Hotel
Cemetery	Racecourse
Concert Hall	Residential Club

Consulting Room	Group Dwelling
Crematorium	Intensive Animal keeping
Dance Hall	Residential Flat Building
Demolition of State Heritage Places listed in Table PAdE/2 and demolition of any part of an element described in the extent of listing in Table PAdE/4 of a local heritage place	Row Dwelling
Detached Dwelling	Semi-detached Dwelling
Dog Track	Shop or group of shops with a gross leasable area of greater than 250 square metres
Drive-in Theatre	Show Ground
Exhibition Hall	Skating Rink
Fun Fair	Stadium
Golf Driving Range	Stock Salesyard
	Theatre
	Used Car Lot
	Welfare Institution

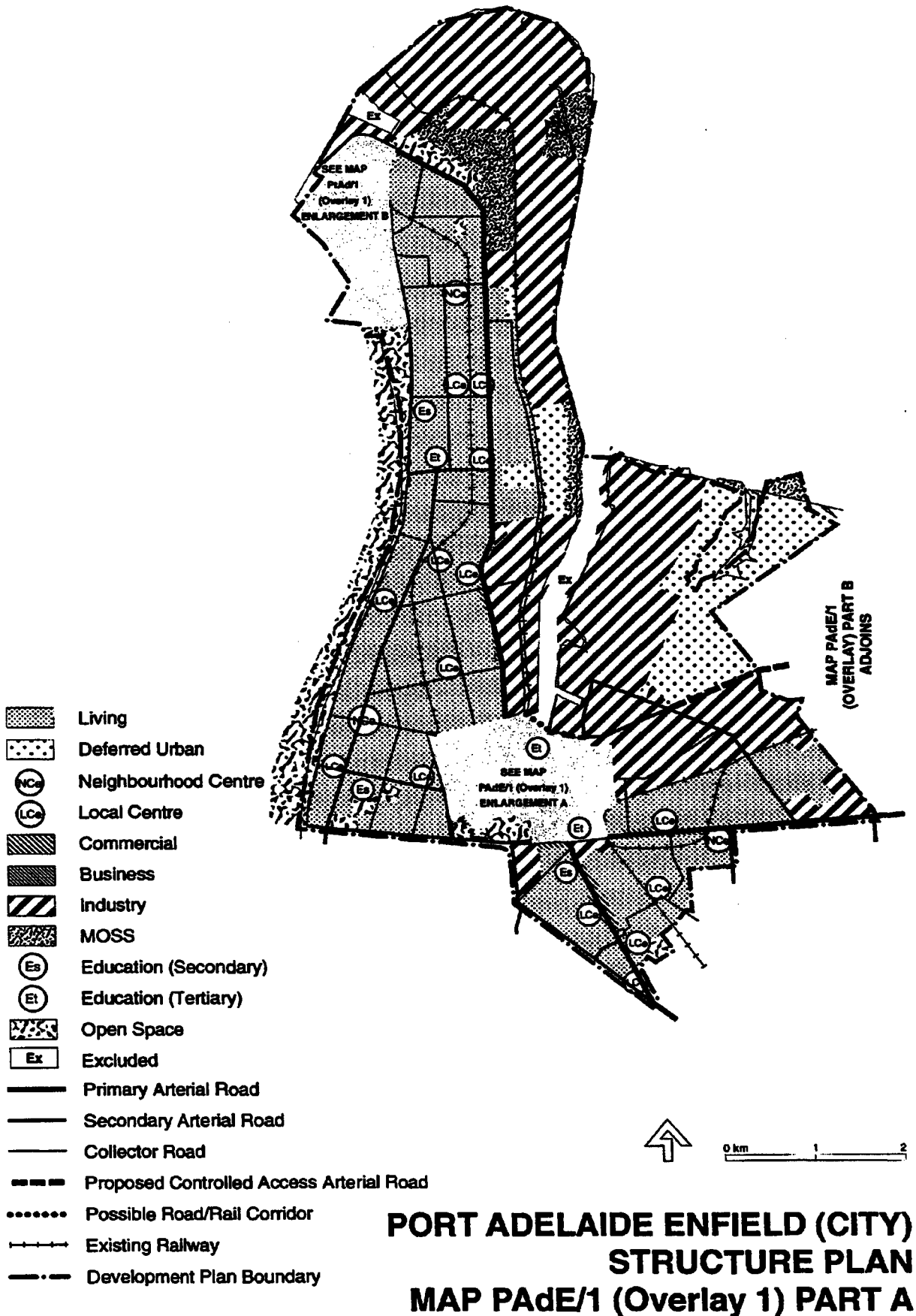
PUBLIC NOTIFICATION CATEGORIES

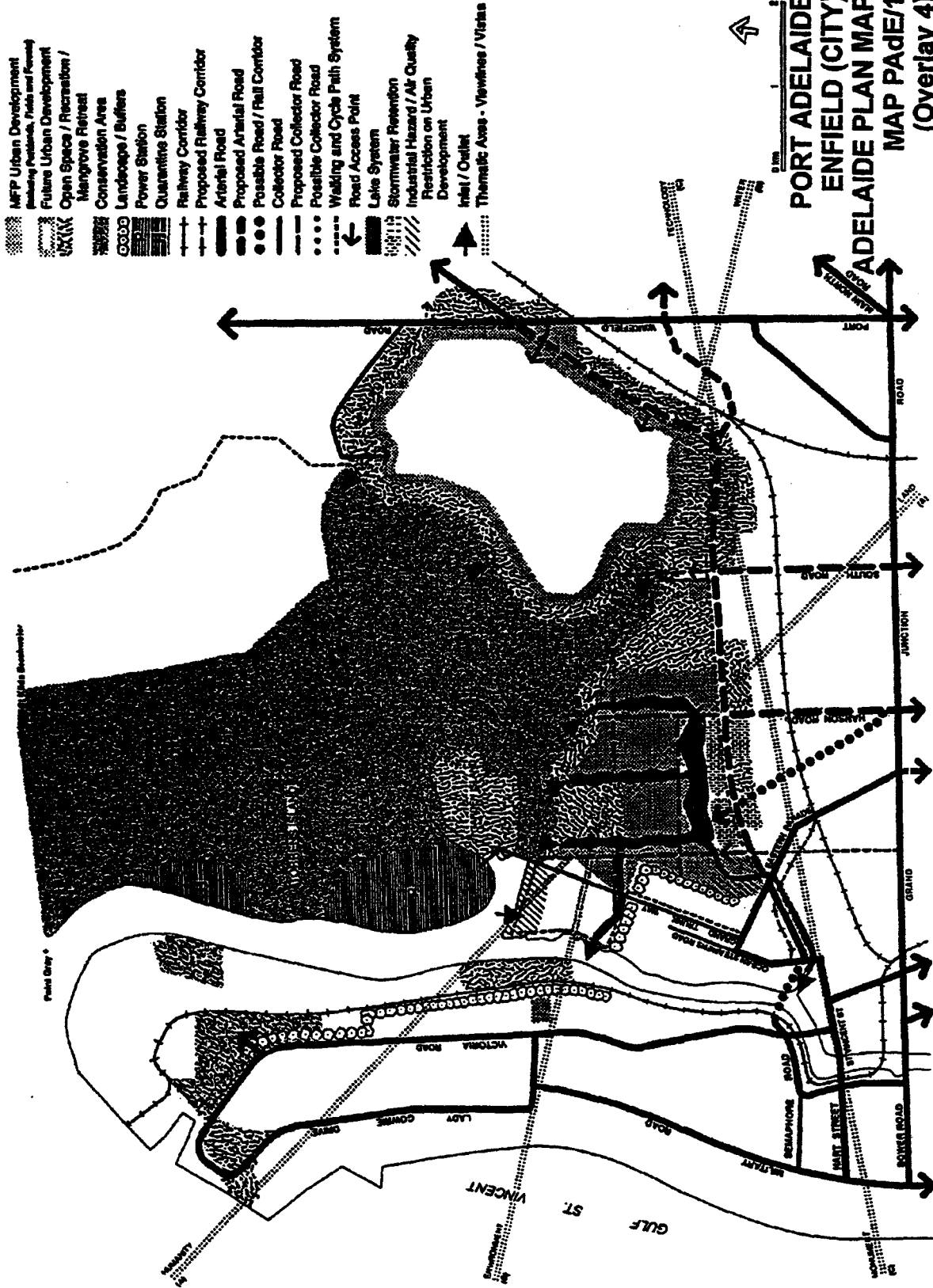
16 The following kinds of development are assigned to Category 1 in the Industry (Port) Zone:

- harbor installations
- navigational aids
- transshipment facilities
- customs operations
- intermodal cargo transfer facilities
- container terminals
- storage areas used for the temporary holding of port cargo
- ship repair facility
- bunker facility
- cargo handling facilities
- offices associated with port activities where the office is ancillary to the port activity

17 All kinds of development, except those designated as Category 1 or non-complying, are assigned to Category 2 in the Industry (Port) Zone.

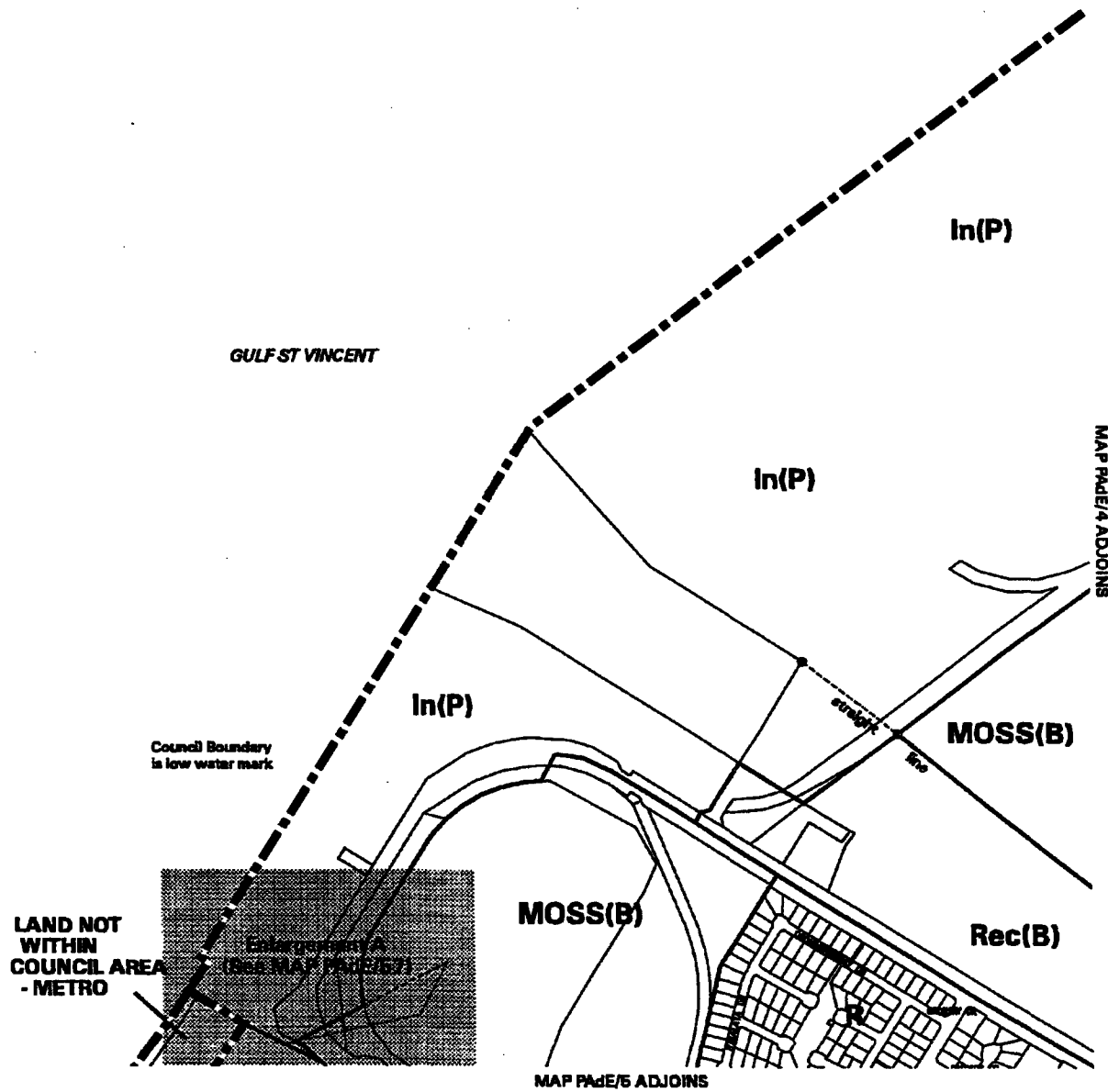
ATTACHMENT B





**PORT ADELAIDE
ENFIELD (CITY)
ADELAIDE PLAN MAP
MAP PADE/1
(Overlay 4)**

Consolidated 16 March 2000

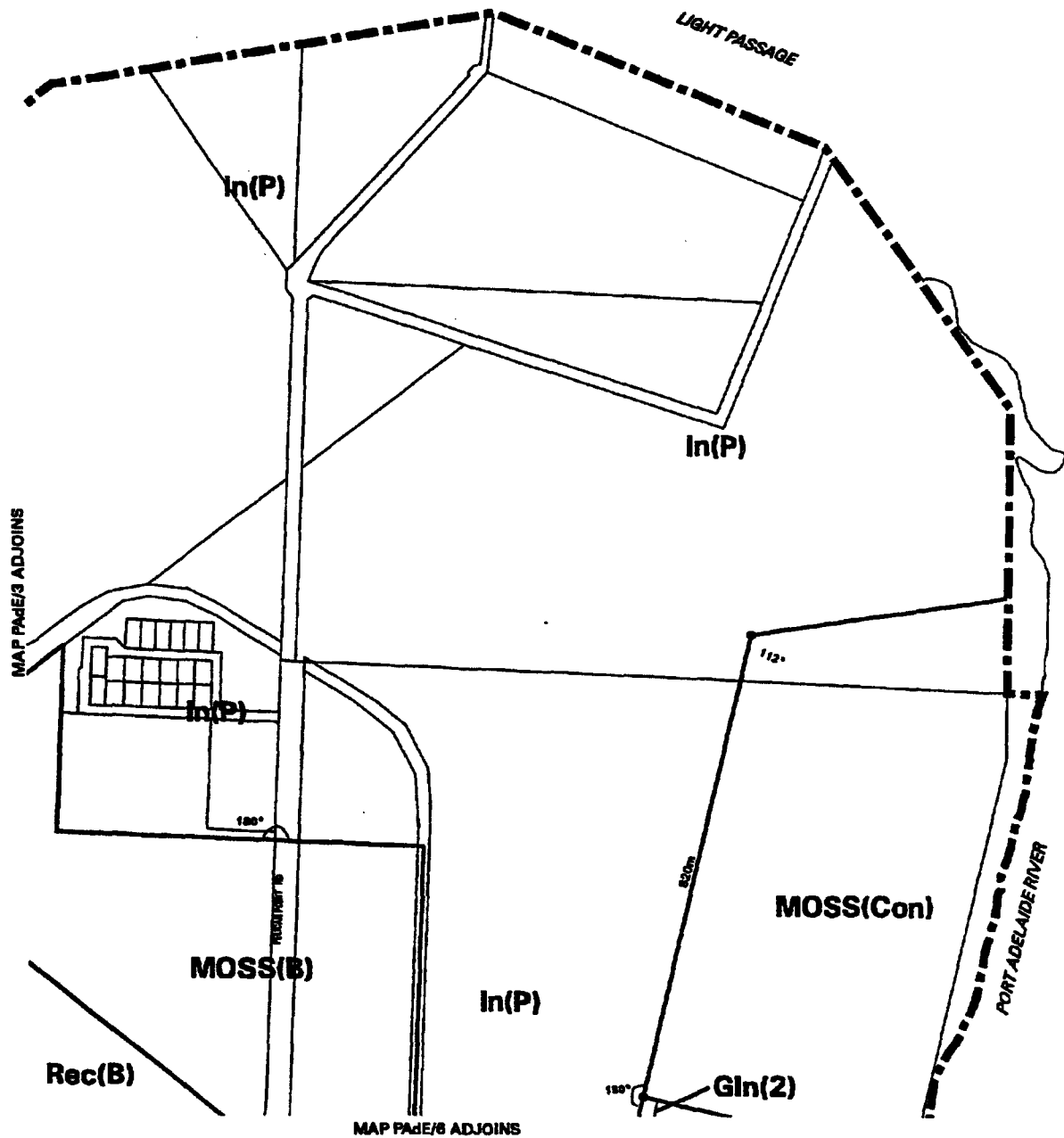


NOTE : For Policy Areas See MAP PADE/42
 In(P) Industry (Port)
 MOSS(B) Metropolitan Open Space System (Buffer)
 R Residential
 Rec(B) Recreation (Buffer)



**PORT ADELAIDE ENFIELD (CITY)
 ZONES
 MAP PADE/3**

———— Zone Boundary
 - - - - - Development Plan Boundary

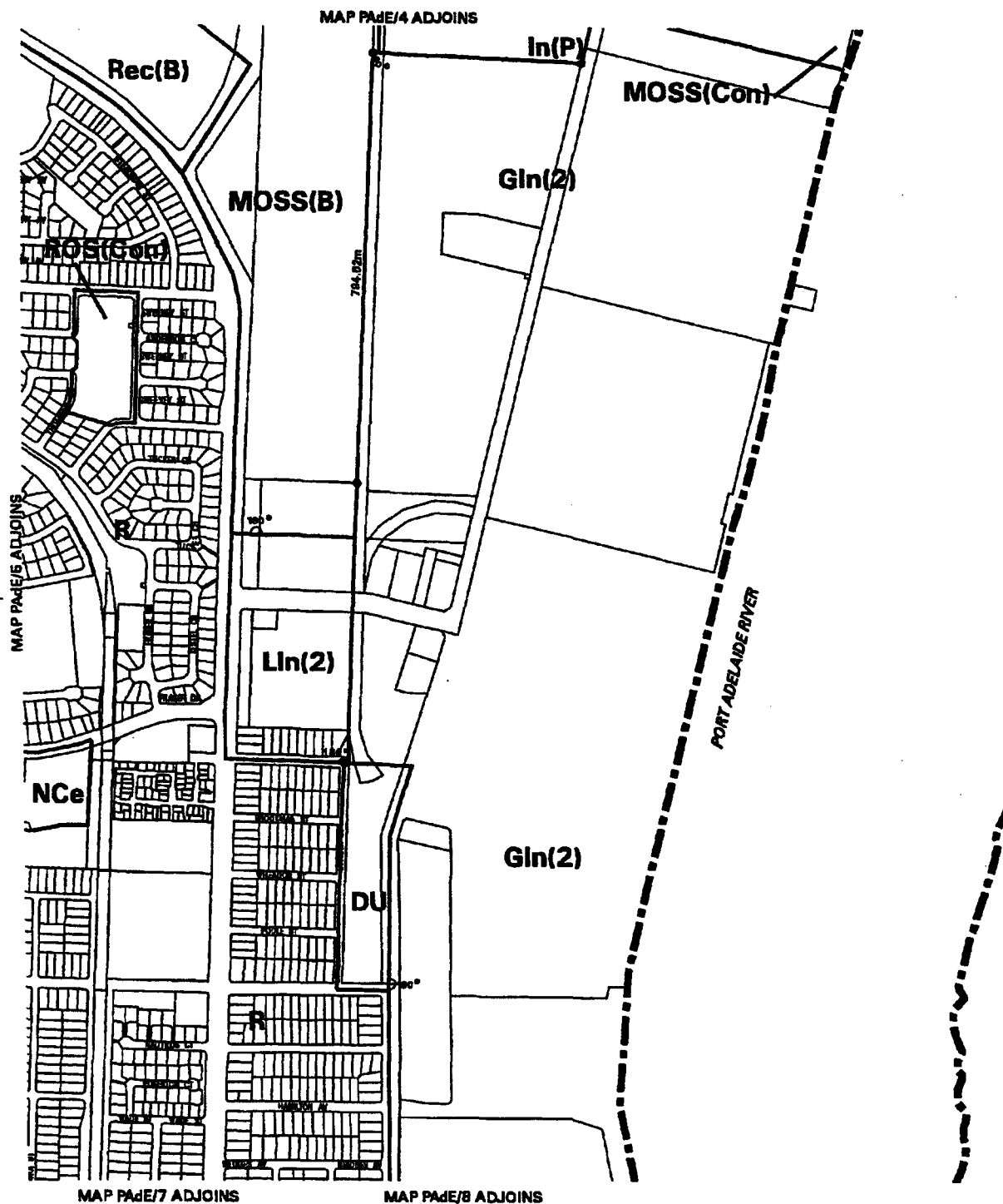


- Gln(2) General Industry (2)
- In(P) Industry (Port)
- MOSS(B) Metropolitan Open Space System (Buffer)
- MOSS(Con) Metropolitan Open Space System (Conservation)
- Rec(B) Recreation (Buffer)



**PORT ADELAIDE ENFIELD (CITY)
ZONES
MAP PADE/4**

- Zone Boundary
- - - - - Development Plan Boundary

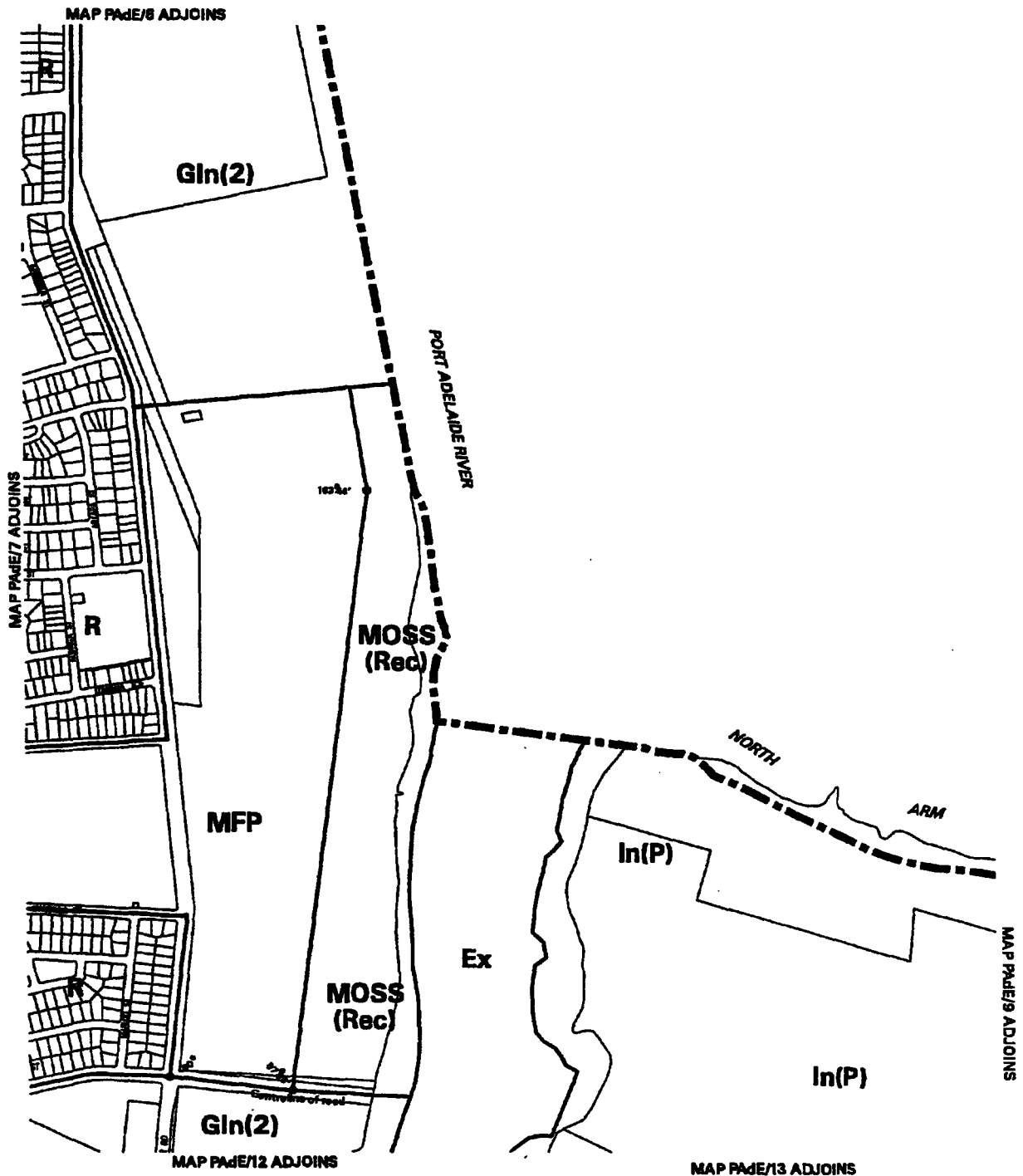


NOTE : For Policy Areas See MAP PAde/44

- | | |
|-----------|---|
| DU | Deferred Urban |
| Gln(2) | General Industry (2) |
| In(P) | Industry (Port) |
| Lln(2) | Light Industry (2) |
| MOSS(B) | Metropolitan Open Space System (Buffer) |
| MOSS(Con) | Metropolitan Open Space System (Conservation) |
| NCe | Neighbourhood Centre |
| R | Residential |
| ROS(Con) | Regional Open Space (Conservation) |
| Rec(B) | Recreation (Buffer) |

- | | |
|--|---------------------------|
| | Zone Boundary |
| | Development Plan Boundary |

**PORT ADELAIDE ENFIELD (CITY)
ZONES
MAP PAde/6**



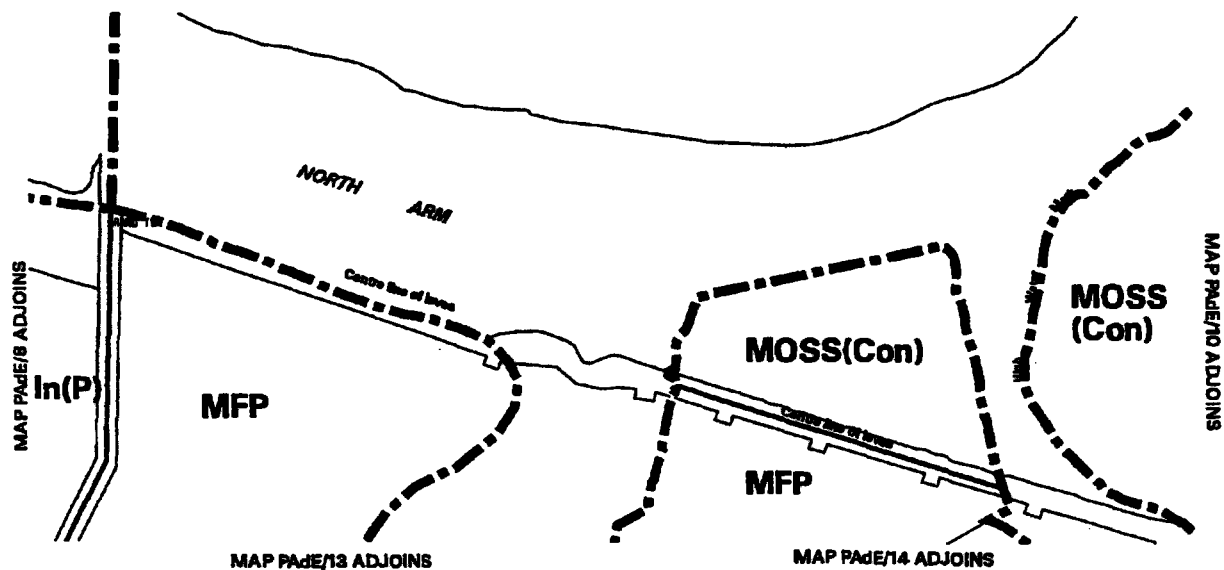
NOTE : For Policy Areas See MAP PAde/46

Ex	Excluded
Gln(2)	General Industry (2)
In(P)	Industry (Port)
MFP	Multi-function Polis
MOSS(Rec)	Metropolitan Open Space System (Recreation)
R	Residential



	Zone Boundary
	Development Plan Boundary

**PORT ADELAIDE ENFIELD (CITY)
ZONES
MAP PAde/8**

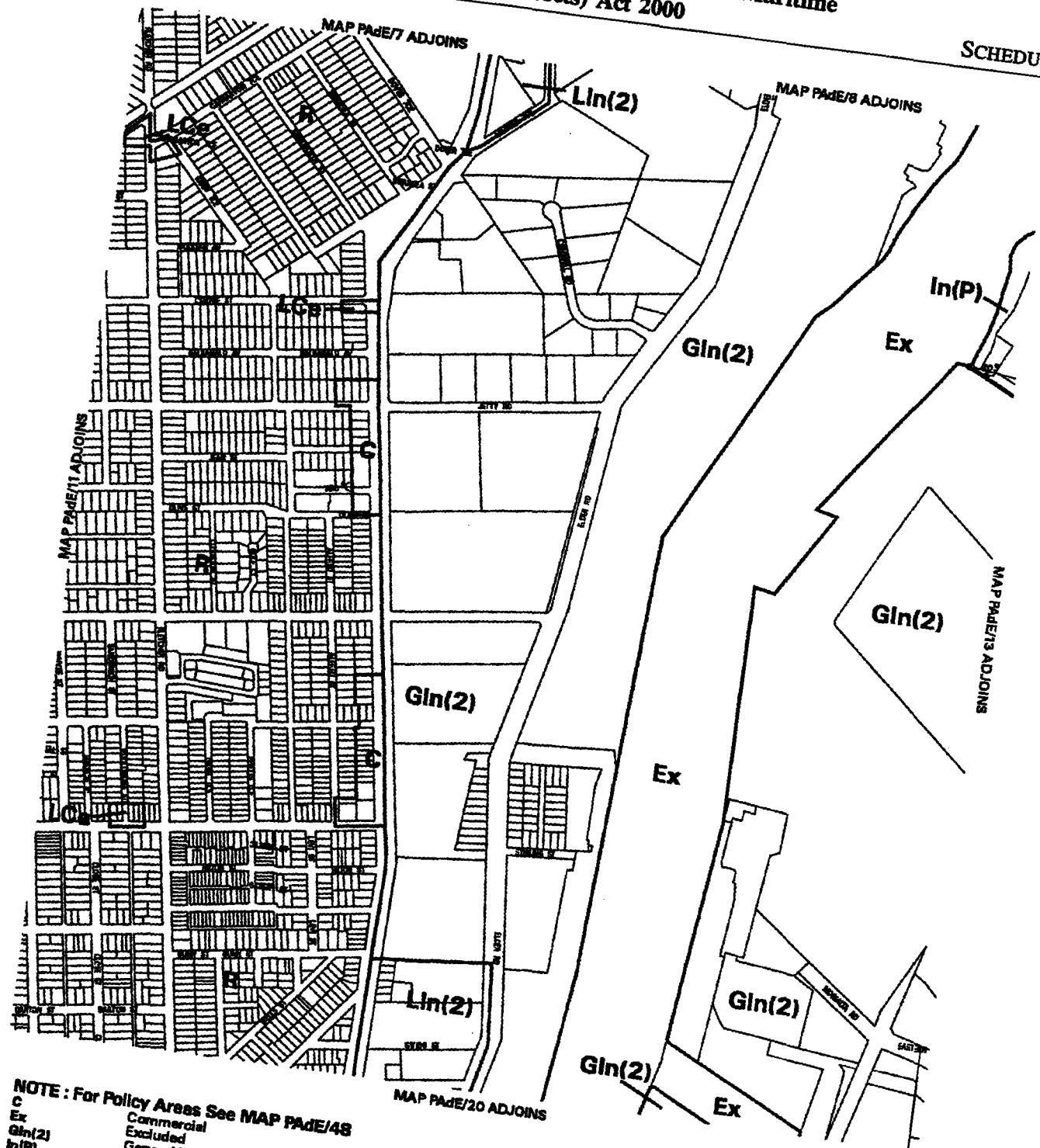


In(P) Industry (Port)
MFP Multi-function Polis
MOSS(Con) Metropolitan Open Space System (Conservation)



**PORT ADELAIDE ENFIELD (CITY)
 ZONES
 MAP PAde/9**

———— Zone Boundary
 - - - - - Development Plan Boundary



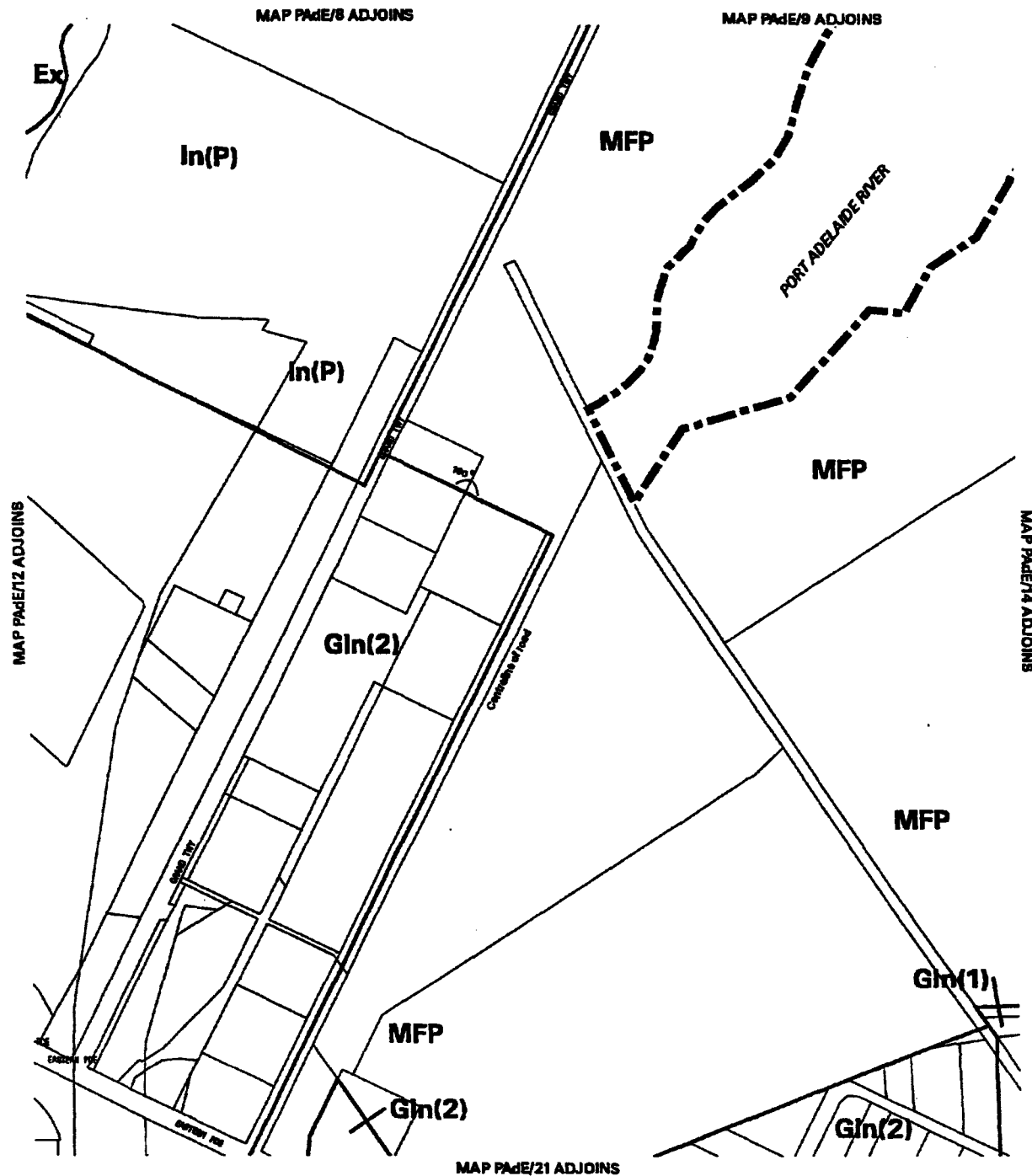
NOTE : For Policy Areas See MAP PADE/48

C	Commercial
Ex	Excluded
GIn(2)	General Industry (2)
In(P)	Industry (Port)
LCo	Local Centre
LIn(2)	Light Industry (2)
R	Residential

 Zone Boundary
 Development Plan Boundary




**PORT ADELAIDE ENFIELD (CITY)
ZONES
MAP PADE/12**

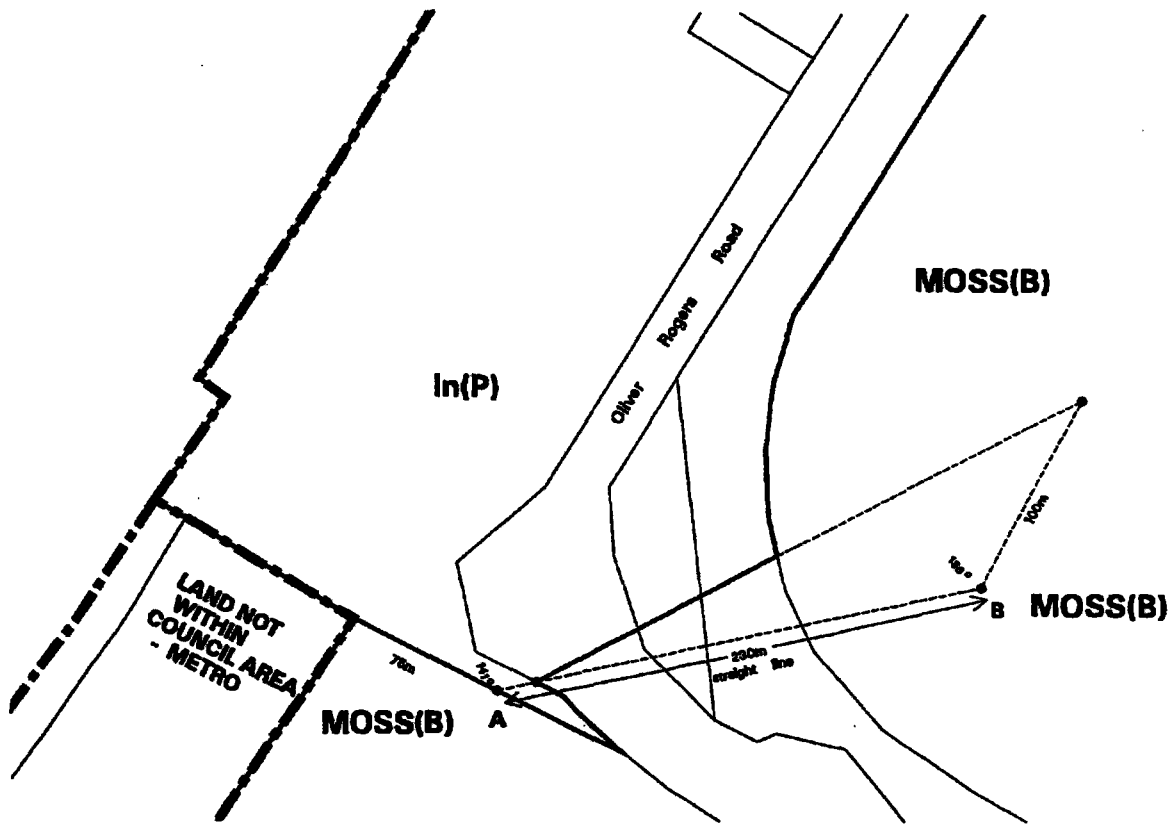


Ex Excluded
 Gln(1) General Industry (1)
 Gln(2) General Industry (2)
 In(P) Industry (Port)
 MFP Multi-function Polis



PORT ADELAIDE ENFIELD (CITY)
ZONES
MAP PAde/13

————— Zone Boundary
 - - - - - Development Plan Boundary



ENLARGEMENT A

In(P) Industry (Port)
MOSS(B) Metropolitan Open Space System (Buffer)



**PORT ADELAIDE ENFIELD (CITY)
 ENLARGEMENT
 MAP PAde/57**

———— Zone Boundary
 - - - - - Development Plan Boundary

SCHEDULE 3
*Superannuation Benefits for Transferred Employees***Interpretation**

1. In this Schedule, unless the contrary intention appears—

"Board" means the South Australian Superannuation Board;

"contribution account" means an account to which a contributor's contributions are credited (together with interest and accretions);

"contributor" means a contributor to a superannuation scheme;

"employer account" means an account to which an employer's contributions are credited (together with interest and accretions);

"new scheme contributor" has the meaning given by the *Superannuation Act 1988*;

"old scheme contributor" has the meaning given by the *Superannuation Act 1988*;

"presumptive retirement age" means—

- (a) for a transferred employee who is under 60 years of age on the relevant day—the age of 60 years;
- (b) for a transferred employee who is 60 years of age or above on the relevant day, the lesser of the following:
 - (i) the employee's age on the date when the employee's contributions would have ceased under section 23(T)(a) of the *Superannuation Act 1988* assuming that the employee had continued as an old scheme contributor under that Act;
 - (ii) the age of 65 years;

"PSESS scheme" means the Public Sector Employees Superannuation Scheme established pursuant to a deed of arrangement dated 27 September 1989 between the Treasurer and the secretary of the United Trades and Labor Council;

"regulated superannuation scheme" means a superannuation scheme regulated under the *Superannuation Industry (Supervision) Act 1993* (Cwth);

"relevant day" means the day on which a transferred employee is transferred to private employment under this Act;

"rollover account" means an account to which is credited an amount rolled over from another superannuation scheme into an account kept under the Triple S scheme (together with interest and accretions);

"SIS requirements" means requirements of the *Superannuation Industry (Supervision) Act 1993* (Cwth) or other legislation of the Commonwealth related to superannuation;

"standard contribution rate" has the same meaning as in section 4 of the *Superannuation Act 1988*;

"transferred employee" means an employee who is transferred to private employment under this Act;

"Triple S scheme" means the superannuation scheme established under the *Southern State Superannuation Act 1994*.

Triple S Scheme

2. (1) This clause applies to a transferred employee who was on the relevant day a contributor to the Triple S scheme.

- (2) A transferred employee who has not reached the age of 55 years is entitled to the following:
- (a) the balance of the employee's contribution account (which may be taken immediately, preserved in the Triple S scheme, or rolled over into a regulated superannuation scheme);
 - (b) the balance of the employer account (which may be preserved in the Triple S scheme or rolled over to a regulated superannuation scheme as a preserved amount);
 - (c) the balance of any rollover account (which (subject to SIS requirements) may be taken immediately, preserved in the Triple S scheme, or rolled over into a regulated superannuation scheme).
- (3) A transferred employee who has reached the age of 55 years is entitled to the following:
- (a) the balance of the employee's contribution account (which may be taken immediately or rolled over into a regulated superannuation scheme);
 - (b) the balance of the employer account (which may be taken immediately or rolled over into a regulated superannuation scheme);
 - (c) the balance of any rollover account (which (subject to SIS requirements) may be taken immediately, preserved in the Triple S scheme, or rolled over into a regulated superannuation scheme).

New scheme contributors

3. (1) This clause applies to a transferred employee who was, on the relevant day, a new scheme contributor.

(2) A transferred employee who has not reached the age of 55 years may elect to do one of the following:

- (a) to preserve his or her accrued superannuation benefits under section 28(1)(b) of the *Superannuation Act 1988*;
- (b) to take immediately or roll over into a regulated superannuation scheme the aggregate of the following amounts:
 - (i) the balance of the employee's contribution account; and
 - (ii) the lesser of—
 - twice the balance of the employee's contribution account; or
 - twice the amount that would have been the balance of the contribution account if the employee had contributed to the scheme at the employee's standard contribution rate throughout the period of the employee's membership of the scheme;
 - (iii) an amount determined in accordance with section 28(5)(b)(ii)(B) of the *Superannuation Act 1988*,

and if the employee was a member of the PSESS scheme, the amount standing to the employee's account under section 32A(6) of the *Superannuation Act 1988* is to be added to the amount preserved, rolled over or taken in cash under paragraph (a), (b) or (c).

(3) A transferred employee who has reached the age of 55 years may elect to do one of the following:

- (a) to preserve his or her accrued superannuation benefits under section 28(1)(b) of the *Superannuation Act 1988*;
- (b) to take immediately or roll over into a regulated superannuation scheme an amount determined under section 27 of the *Superannuation Act 1988* as if the employee had retired from employment on the relevant day,

and if the employee was a member of the PSESS scheme, the amount standing to the employee's account under section 32A(6) of the *Superannuation Act 1988* is to be added to the amount preserved, taken or rolled over under paragraph (a) or (b).

(4) A transferred employee who elects to preserve his or her accrued benefits under this clause is not entitled to payment of the preserved benefits under the *Superannuation Act 1988* until the employee's employment with the purchaser has terminated.

(5) An election under this clause is made by notice in writing given personally or by post to the Board.

(6) If a transferred employee fails to make an election under this clause within one month after the relevant day, the employee is taken to have elected to preserve his or her accrued superannuation benefits under section 28(1)(b) of the *Superannuation Act 1988*.

Old scheme contributors

4. (1) This clause applies to a transferred employee who was, on the relevant day, an old scheme contributor.

(2) A transferred employee who has not reached the age of 55 years may elect to do one of the following:

- (a) to preserve his or her accrued superannuation benefits under section 39(1)(b) of the *Superannuation Act 1988*;
- (b) to take immediately or roll over into a regulated superannuation scheme the aggregate of the following amounts:
 - (i) the balance of the employee's contribution account; and
 - (ii) the lesser of—
 - 2.5 times the balance of the employee's contribution account; or
 - 2.5 times the amount that would have been the balance of the contribution account if the employee had contributed to the scheme at the employee's standard contribution rate throughout the period of the employee's membership of the scheme.

(3) A transferred employee who has reached the age of 55 years may elect to do one of the following:

- (a) to preserve his or her accrued superannuation benefits under section 39(1)(b) of the *Superannuation Act 1988*;
- (b) to take immediately or roll over into a regulated superannuation scheme an amount equivalent to the commuted value of the pension to which the employee would have been entitled if he or she had retired from employment on the relevant day and had elected to commute 100% of the pension.

(4) A transferred employee who has elected to preserve his or her accrued benefits under this clause is not entitled to a retirement pension or a benefit related to the commutation of a retirement pension under the *Superannuation Act 1988* until the employee's employment with the purchaser has terminated.

(5) An election under this clause is made by notice in writing given personally or by post to the Board.

(6) If a transferred employee fails to make an election under this clause within one month after the relevant day, the employee is taken to have elected to preserve his or her accrued superannuation benefits under section 39(1)(b) of the *Superannuation Act 1988*.

Special provision for certain old scheme contributors

5. (1) This clause applies to a transferred employee—

- (a) who was, on the relevant day an old scheme contributor; and
- (b) whose contributions had, as at that day, not ceased under section 23(7)(a) of the *Superannuation Act 1988*; and
- (c) who elected to preserve his or her accrued superannuation benefits under section 39(1)(b) of the *Superannuation Act 1988*.

(2) The Treasurer must obtain an actuarial report (from an actuary appointed for the purpose by the Treasurer) on each employee to whom this clause applies to determine a lump sum representing the amount (if any) by which the value of the retirement benefit referred to in paragraph (a) exceeds the aggregate value of the retirement benefits referred to in paragraph (b)—

- (a) the value (expressed as a capital sum) of the retirement benefit the employee would have received under the *Superannuation Act 1988* assuming the employee had continued as a public sector employee, had continued to contribute as an old scheme contributor at the employee's average rate of contribution, and had retired on reaching the employee's presumptive retirement age; and
- (b) the aggregate value (expressed as a capital sum) of the retirement benefits to which the employee would be entitled assuming that the employee retired on reaching the employee's presumptive retirement age, then took retirement benefits under the *Superannuation Act 1988* and also took retirement benefits under a private superannuation scheme to which the employee and the employer had contributed at the respective average contribution rates for the employee and the employer under the State scheme from the relevant day until the employee reached the employee's presumptive retirement age.

(3) The Treasurer must pay a lump sum (if any) determined under subclause (2) to an account in the name of the employee in a regulated superannuation scheme nominated by the employee.

Provisions as to preservation apply despite the fact that the transferred employee may be over 55

6. The provisions of this schedule as to the preservation of benefits under the *Superannuation Act 1988* apply even though the transferred employee may be over the age of 55 years.

Modifications to Superannuation Act 1988 to continue in operation

7. (1) This section applies to modifications, made under section 5 of the *Superannuation Act 1988*, to provisions of that Act in their application to employees of the Corporation.

(2) Subject to a determination to the contrary by the Minister, the modifications—

- (a) continue to apply to employees of the Corporation who are transferred under this Act to positions in the Department for Administrative and Information Services while they remain in the Public Service; and
- (b) apply for the purpose of determining the superannuation entitlements (if any) under that Act of, or relating to, those employees.