

Bayside Project Bill

No.

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Bayside land

SCHEDULE 2

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SCHEDULE 4

Land on which development restricted

LEGISLATIVE ASSEMBLY

Read 1° 15 November 1988

(Brought in by Mr Jolly and Mr Fordham)

A BILL

to facilitate the development of certain land at Port Melbourne and
for other purposes.

Bayside Project Act 1988

Preamble.

The State of Victoria and the Urban Land Authority desire that the
development and use of certain land at Port Melbourne should be
facilitated and it is expedient to make appropriate provision as set out
5 in this Act.

The Parliament of Victoria therefore enacts as follows:

PART 1—PRELIMINARY

Purpose.

1. The purpose of this Act is to facilitate the development of certain
10 land at Port Melbourne.

Commencement.

2. (1) Subject to sub-sections (2) and (3), this Act comes into
operation on a day or days to be proclaimed.

(2) Section 3 (3) comes into operation on the day on which section
15 4 (1) of the *Subdivision Act* 1988 comes into operation.

(3) Section 38 comes into operation on a day to be proclaimed,
being a day after the Minister has declared in writing that the Minister

is satisfied that at least five per centum of the Bayside land in suitable locations is set aside as public open space.

Definitions.

3. (1) In this Act—

“Bayside land” means—

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(a) the land shown hatched or cross-hatched on the plan in Schedule 1, other than any part or parts of that land that is declared under sub-section (2) (c) to be excluded from the Bayside land; and

(b) any other land declared under sub-section (2) (a) to be part of the Bayside land. 10

“By-laws” in relation to an item in Schedule 3, means the by-laws in that item as amended and in force for the time being.

“Common allotment” in relation to an item in Schedule 3, means the land specified in column 4 of that item. 15

“Court”, in Part 2, has the same meaning as in the *Strata Titles Act* 1967.

“Development plan” means a development plan as amended and in force for the time being under the planning scheme for the time being in force relating to the Bayside land or any part of the Bayside land. 20

“Open space management prescription” in relation to a development plan means a management prescription for the control and maintenance of open space and landscaping as prepared, amended or modified for the time being to the satisfaction of the responsible authority. 25

“Primary allotment” in relation to an item in Schedule 3, means an allotment in column 2 of that item.

(2) The Governor in Council by Order published in the *Government Gazette*— 30

(a) may declare to be part of the Bayside land any land in the vicinity of that part of the Bayside land that is referred to in paragraph (a) of the definition of “Bayside land”; and

(b) may declare that land that is— 35

(i) declared under paragraph (a) to be part of the Bayside land; and

(ii) adjacent to the land shown cross-hatched on the plan in Schedule 1—

shall, for the purposes of this Act, be deemed to be land shown cross-hatched on that plan; and 40

(c) may declare any land to be excluded from the Bayside land.

(3) A reference in this Act to the *Strata Titles Act 1967* or the *Cluster Titles Act 1974* or a provision of the *Strata Titles Act 1967* or the *Cluster Titles Act 1974*—

- (a) is a reference to that Act or provision as in force on 1 November 1988; and
- (b) has effect as if that Act or the relevant provision were incorporated in this Act, despite any subsequent repeal or amendment of that Act or provision.

Act to bind the Crown.

4. This Act binds the Crown.

PART 2—BAYSIDE LAND

Implied easements.

5. (1) Upon the approval by the Registrar of Titles under the *Transfer of Land Act 1958* of a plan of subdivision of the whole or any part of the Bayside land, each allotment or common allotment on that plan has as appurtenant to it all the rights of support, shelter and protection, and for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, air and all other services of whatever nature (including telephone, radio, television and data transmission services) together with rights of carriage-way (within the meaning of the Twelfth Schedule to the *Transfer of Land Act 1958*) (with or without vehicles) over all other allotments (including common allotments) on that plan that may be necessary for the reasonable use and enjoyment of the whole or any part of the allotment or common allotment .

(2) The rights created by sub-section (1) are easements and carry with them all ancillary rights necessary to make them effective.

(3) A person exercising a right created by sub-section (1)—

- (a) is entitled to exercise that right only over such part or parts of an encumbered allotment as is reasonable in all the circumstances; and
- (b) must make good all damage done in the exercise of the right.

(4) If there is an inconsistency between this section and section 98 of the *Transfer of Land Act 1958*, this section prevails.

Sale of part of Bayside land etc.

6. (1) The Registrar of Titles may, on the application of the Minister or the Urban Land Authority, issue to the registered proprietor, or the person entitled to be registered as the registered proprietor, of the Bayside land or a part or parts of the Bayside land a single certificate of title consolidating any constituent parcels of that land (whether or not contiguous) and must forthwith cancel any existing Crown grant or certificate of title with respect to the land to which the single certificate of title relates.

- (2) The Registrar of Titles is authorised to issue a single certificate of title under sub-section (1) despite any overlapping between the boundaries of the parcels of land comprised in the land with respect to which the certificate is issued or the existence of any gaps that the Registrar considers to be minor between those boundaries. 5
- (3) The Registrar of Titles is authorised and directed to make all such cancellations of or entries upon any Crown grant or certificate of title and any duplicate of any such Crown grant or certificate of title or other document as may be necessary or expedient in consequence of sub-section (1) or (2) and the holder of any duplicate of any such Crown grant or certificate of title must produce it to the Registrar of Titles for that purpose. 10
- (4) The Registrar-General is authorised and directed to make all such entries upon the records of enrolment of any Crown grant and upon any material relating to any land concerned as are necessary or expedient in consequence of sub-section (1) or (2). 15
- (5) If the Governor in Council by Order declares that this sub-section applies, the registered proprietor or a person entitled to be registered as the registered proprietor of the Bayside land or a part or parts of the Bayside land to which a single certificate of title issued under sub-section (1) relates may sell any part or parts of that land although that part is not, or those parts are not, an allotment or allotments on a plan of subdivision that has been sealed by the Council of the City of Port Melbourne. 20
- (6) A contract for the sale of land under sub-section (5) must provide that the deposit moneys and all other moneys payable by the purchaser are to be paid to a solicitor or a licensed estate agent named or specified in the contract. 25
- (7) The deposit and any other moneys paid by a purchaser of any part of the Bayside land before a plan of subdivision on which that part is an allotment is approved by the Registrar of Titles under the *Transfer of Land Act 1958*— 30
- (a) must be paid to the solicitor or licensed estate agent named or specified in the contract; and
 - (b) must be held by that person on trust for the purchaser until such a plan of subdivision is sealed by the Council of the City of Port Melbourne and approved by the Registrar of Titles under the *Transfer of Land Act 1958*. 35
- (8) If this section is not complied with, the purchaser may, at any time before the plan has been approved by the Registrar of Titles, avoid the sale. 40
- (9) If the plan is not approved by the Registrar of Titles within the period of 18 months after the contract of sale is entered into, the purchaser may, at any time after that period and before the plan is approved, avoid the sale. 45

(10) If the purchaser avoids the sale under this section, all money paid by the purchaser under the contract is recoverable by the purchaser, except for any money paid by the purchaser as an occupation rent for any period during which the purchaser was in actual occupation of the land.

(11) Sections 8A, 9, 9AA, 9AB, 9AC, 9AD, 9AE and 9AF of the *Sale of Land Act* 1962 and section 7 of the *Strata Titles Act* 1967 do not apply to a sale of land under this section.

Governor in Council may make certain Orders.

7. (1) If the Governor in Council is satisfied that—
- (a) a plan of subdivision sealed by the Council of the City of Port Melbourne of any part of the Bayside land forms part of a scheme for the development of the whole or any part of the Bayside land; and
 - (b) in all the circumstances it is desirable to do so—
- the Governor in Council may, by Order, declare that—
- (c) the whole or any part of the land to which the plan of subdivision applies; or
 - (d) the whole or any part of that land or any other part of the Bayside land—

is to be regarded as one allotment for the purposes of the *Building Control Act* 1981 and regulations under that Act.

(2) An Order under sub-section (1) may be made subject to such terms and conditions (if any) as the Governor in Council determines.

Plan of subdivision may be sealed or approved despite need for certain easements.

8. (1) Nothing in the *Local Government Act* 1958 or the *Transfer of Land Act* 1958 prevents the Council of the City of Port Melbourne sealing, or the Registrar of Titles approving, a plan of subdivision of any part of the Bayside land by reason that there are specified on the plan any allotments that require easements of the kind mentioned in section 5.

(2) The Council of the City of Port Melbourne or the Registrar of Titles must not refuse to seal or approve a plan of subdivision referred to in sub-section (1) by reason that there are specified on the plan allotments requiring easements referred to in that sub-section.

Closure of certain roads.

9. (1) The Governor in Council may, by Order published in the *Government Gazette*, declare that any part or parts of the Bayside land shown hatched on the Plan in Schedule 2, or any other part or parts of the Bayside land used or formerly used as roads, shall be closed as a road or roads.

(2) Sections 5, 6 and 6A of the *Subordinate Legislation Act* 1962 apply to and in respect of an Order made under sub-section (1) as if the Order were a statutory rule within the meaning of that Act notice of which had been published in the *Government Gazette* on the day on which the Order was so published.

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(3) An Order under sub-section (1) comes into force, if it is not disallowed by the Parliament, on the day fixed by notice published in the *Government Gazette*, being a day later than the last day on which it could have been disallowed by the Parliament, and upon the Order coming into force—

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(a) the land to which the Order relates shall be closed as a road or roads; and

(b) all rights, easements and privileges existing or claimed either in the public or by any body or person as incident to any express or implied grant or past dedication or supposed dedication or by user or by operation or any fiction of law shall cease; and

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(c) the land shall be deemed to be unalienated land of the Crown.

(4) The Registrar of Titles is authorised and directed to make all such cancellations of or entries upon any Crown grant or certificate of title and any duplicate of any such Crown grant or certificate of title or other document as may be necessary or expedient in consequence of this section and the holder of any duplicate of any such Crown grant or certificate of title must produce it to the Registrar of Titles for that purpose.

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(5) The Registrar-General is authorised and directed to make all such entries upon the records of enrolment of any Crown grant and upon any memorial relating to any land concerned as are necessary or expedient in consequence of this section.

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(6) No compensation is payable by the Crown in respect of any act, matter or thing done or arising out of this section.

Vesting of land in Urban Land Authority.

10. (1) Sections 19 and 20 of the *Urban Land Authority Act* 1979 extend to the transfer or grant to the Urban Land Authority—

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(a) of any part or parts of the Bayside land covered with waters of the sea and any structures erected on that part or those parts; or

(b) of any other lands covered with waters of the sea in the vicinity of the Bayside land, and any structures erected on those other lands—

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that are, or are to be, reclaimed or otherwise developed.

(2) A grant to the Urban Land Authority of any part of the Bayside land or of any other land referred to in sub-section (1) takes effect as to depth—

- 5 (a) in the case of land not covered with waters of the sea, to a depth of 60 metres below the surface; and
- (b) in the case of land covered with waters of the sea, to a depth of 60 metres below high water mark.

Reclamation of land.

10 11. The reclamation of any lands forming part of, or proposed to form part of, the Bayside land is authorised by this section.

Land may be declared to be within municipality.

15 12. The Governor in Council may, by Order published in the *Government Gazette*, declare that any part or parts of the Bayside land that adjoins or adjoin, but is or are not within, the municipal district of the City of Port Melbourne to be part of that municipal district.

Effect of certain decisions.

13. If—

- 20 (a) the Minister administering the *Planning and Environment Act* 1987 approves or adopts or purports to approve or adopt any Amendment to a planning scheme affecting the whole or any part of the Bayside land, whether as a result of the appeal No. P88/0971 relating to Amendment No. RL22 to the Metropolitan Region Planning Scheme, or otherwise; or
- 25 (b) in relation to the whole or any part of the Bayside land—
 - (i) the Governor in Council makes or purports to make a declaration under section 3 of the *Environment Effects Act* 1978 or the Minister makes or purports to make any assessment or decision under that Act; or
 - 30 (ii) the Environment Protection Authority gives or amends or purports to give or amend any approval or exemption under the *Environment Protection Act* 1970—

35 the Amendment, declaration, assessment, decision, approval, exemption, amended approval or amended exemption is valid and effectual despite any technical defect, omission or irregularity in any matter preliminary to or otherwise affecting the validity or effectiveness of, or otherwise having effect in relation to, the Amendment, declaration, assessment, decision, approval, exemption, amended approval or amended exemption.

40 **Effect of approval of subdivision.**

14. (1) Upon the approval under the *Transfer of Land Act* 1958 by the Registrar of Titles of a plan of subdivision of the Bayside land or any part of the Bayside land that has been specified by Order of the

Governor in Council under section 29 (1) as a plan for the purposes of an item in Schedule 3—

- (a) there is incorporated a body corporate under the name in column 3 of that item; and
 - (b) the common allotment or common allotments (if any) in column 4 of that item vest in the body corporate. 5
- (2) The *Companies (Victoria) Code* does not apply to a body corporate in column 3 of an item in Schedule 3.
- (3) A body corporate in column 3 of an item in Schedule 3—
 - (a) has perpetual succession and a common seal; and 10
 - (b) is capable of suing and being sued in its corporate name; and
 - (c) despite anything to the contrary in this Act, has all the powers and obligations incidental to the ownership of land.
- (4) In relation to a body corporate in column 3 of an item in Schedule 3, the members of the body corporate are— 15
 - (a) unless paragraph (b) applies—
 - (i) the registered proprietor or registered proprietors for the time being of the primary allotments in column 2 of that item; and 20
 - (ii) the registered proprietor or registered proprietors for the time being of any allotment created by the subdivision of a primary allotment in column 2 of that item; and
 - (iii) the registered proprietor or registered proprietors for the time being of any allotment created by the re-subdivision or re-consolidation of land that used to form the whole or any part of a primary allotment, or of two or more primary allotments, in column 2 of that item; and 25 30
 - (b) if a plan of subdivision of land that forms the whole or part of, or that used to form the whole or part of, a primary allotment in column 2 of that item is registered under the *Strata Titles Act* 1967 or the *Cluster Titles Act* 1974, the body corporate (but not the members of the body corporate) created under the Act under which the plan is registered. 35
- (5) A person who has at any time been a member of a body corporate in column 3 of an item in Schedule 3 continues, despite ceasing to be a member, to be entitled to any right accrued, and to be subject to any liability or obligation incurred, while such a member. 40
- (6) Without restricting the generality of sub-section (3), a body corporate in column 3 of an item in Schedule 3 may sue for and in respect of any damage or injury to a common allotment specified in that item caused by any person, whether or not that person is a member of the body corporate or has any interest in the common allotment. 45

(7) A body corporate in column 3 of an item in Schedule 3 and the control, management, administration, use and enjoyment of the common allotments vested in the body corporate are regulated in accordance with this Act and the by-laws specified in column 5 of that item.

(8) The vesting of land or an interest in land under sub-section (1) is exempt from stamp duty under the *Stamps Act* 1958.

(9) In this section, “**registered proprietor**” in relation to a primary allotment or land which at any time forms or formed part of a primary allotment in column 2 of an item in Schedule 3, means a person appearing from the Register Book to be a proprietor of—

- (a) an estate in fee simple; or
- (b) an estate for life—

in the primary allotment or land.

Register Book.

15. (1) The Registrar of Titles shall give effect to the vesting of a common allotment in a body corporate in column 3 of an item in Schedule 3 without an application and without payment of a fee.

(2) The Registrar of Titles shall make such other entries in the Register Book as the Registrar thinks appropriate for the purposes of this Act.

Application of *Strata Titles Act* 1967.

16. (1) The provisions of sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 30, 31, 32, 33 and 44 of the *Strata Titles Act* 1967 apply to a body corporate in column 3 of an item in Schedule 3 as if—

- (a) a reference in those sections to “common property” or “the parcel” were a reference to a common allotment (within the meaning of this Act) referred to in that item; and
- (b) a reference in those sections to “unit on a registered plan” or “unit” were a reference to a primary allotment or, if the context so requires, any part of a primary allotment specified in that item; and
- (c) a reference in those sections to “unit entitlement” or “unit liability” were a reference to unit entitlement or unit liability (if any) set out in the by-laws or the plan of subdivision applying to that item; and
- (d) a reference in those sections to “by-laws” were a reference to by-laws (within the meaning of this Act) referred to in that item; and
- (e) the reference in section 15 (1) (d) to sections 28 and 29 did not appear; and
- (f) in section 19 the words “, or in the case of a member which is a body corporate by virtue of the *Strata Titles Act* 1967

- by any member of that body corporate,” appeared after the words “licensee or invitee”; and
- (g) in section 23 the words “, or in the case of a member which is a body corporate by virtue of the *Strata Titles Act* 1967, on the application of a member of that body corporate or a purchaser or mortgagee from such member,” appeared after the words “mortgagee of a unit”; and 5
- (h) in section 30—
- (i) in sub-section (1) the words “a member of the body corporate (including in the case of a member which is a body corporate by virtue of the *Strata Titles Act* 1967 any member of that body corporate)” appeared after the words “a creditor of the body corporate”; and 10
- (ii) in sub-section (2) the words “section 16 of this Act” appeared in place of the words “this Act”; and 15
- (i) in section 32—
- (i) in sub-section (1) the words “in a prominent position on or near a common allotment” appeared in place of the words “at or near the front building alignment of the parcel”; and 20
- (ii) in sub-sections (1) (a), (1) (b) and (2) (a) the words “recorded in the Register Book” appeared in place of the words “shown on the registered plan”; and
- (iii) in sub-section (3) the words “The notification shall be in a form acceptable to the Registrar and the Registrar shall amend the Register Book accordingly” appeared in place of the words “The notification shall be in the form prescribed by the regulations and the Registrar shall amend the registered plan accordingly”. 25
- (2) The following provisions apply to any plan of subdivision relating to any part or parts of the Bayside land: 30
- (a) If notice is given of intention to subdivide, or a plan is registered, under the *Strata Titles Act* 1967, in the application of that Act—
- (i) sections 6 (1) and 6 (7) have effect as if the references to seventy days were references to 30 days; 35
- (ii) section 6 (2) has effect as if for paragraph (a) there were substituted:
- “(a) it is satisfied that each unit, new unit, enlarged unit or accessory unit, as the case may be, is suitable for the purpose of being separately owned; and”; 40
- (iii) section 6 has effect as if, after sub-section (2) there were inserted—
- “(3) The council must not refuse to cause a plan to be sealed under sub-section (1) on the ground of the 45

proposed use of any unit, new unit, enlarged unit or accessory unit.”;

(iv) section 6 has effect as if sub-section (6) were omitted;

(v) sections 6 (5A) and 6 (5B) do not have effect;

(vi) section 8 does not have effect;

(vii) section 16 has effect as if, after paragraph (e) there were inserted—

“(f) To develop or redevelop the common allotments or construct or alter buildings on it.”;

(viii) section 16 (b) (i) has effect as if after “control” there were inserted the expression “development.”;

(b) If notice is given of intention to subdivide, or a plan is registered under, the *Cluster Titles Act* 1974, in the application of that Act—

(i) section 3 has effect as if in the definition of “accessory lot” the words “and use with any other lot or lots” were omitted and after the words “swimming pool” there were inserted the expression “, mooring”;

(ii) sections 10, 11 (3) (a), 11 (5), 11 (6) (a), 11 (6) (f), 13 and 15 do not have effect;

(iii) the provisions of the *Strata Titles Act* 1967 and the *Local Government Act* 1958 incorporated by reference in that Act were modified as set out in paragraphs (a) and (c);

(c) If notice is given of intention to subdivide under the *Local Government Act* 1958 or a plan is approved under the *Transfer of Land Act* 1958, in the application of the *Local Government Act* 1958—

(i) section 569B (8) has effect as if paragraphs (d) and (o) were omitted;

(ii) section 569G does not have effect.

Duties of body corporate.

17. (1) The duties of a body corporate in column 3 of an item in Schedule 3, in addition to the duties set forth in section 15 of the *Strata Titles Act* 1967, include the following:

(a) To observe and comply with the provisions of the open space management prescription;

(b) To insure against public liability arising out of or in connection with the lawful use, occupation or ownership of the common allotments vested in the body corporate;

(c) To keep in safe custody the duplicate certificate of title of any common allotment vested in the body corporate;

(d) To keep clean and maintain in good and serviceable repair and keep dredged the canals, basins and other waterways in

the land subject to the plan of subdivision referred to in column 1 of that item in Schedule 3 and provide and maintain in good and serviceable repair such engineering or other works as are necessary to provide and regulate circulation of water in those canals, basins and other waterways. 5

(2) The body corporate, for the purposes of effecting any insurance under sub-section (1) (b), is deemed to have an insurable interest in the subject-matter of that insurance.

Powers of body corporate. 10

18. (1) The powers of a body corporate in column 3 of an item in Schedule 3, in addition to the powers set forth in section 16 of the *Strata Titles Act* 1967 include the following:

- (a) To control, manage, maintain and administer the common allotments in that item for the benefit of all persons having rights to the use and enjoyment of them; 15
- (b) Subject to this Act and to any restrictions and requirements from time to time in force under the planning scheme for the time being in force relating to the Bayside land or any part of the Bayside land, to carry out works and improvements on the common allotments in that item; 20
- (c) To expend or apply any revenue from, or from the use of, the common allotment in that item in connection with the performance of any duty or the exercise of any power conferred by this Act or the by-laws. 25

(2) A body corporate in an item in Schedule 3 may, subject to this Act and the by-laws in that item, apply for, or join in an application for, an amendment to any development plan or open space management prescription from time to time in force under the planning scheme for the time being in force relating to the Bayside land or any part of the Bayside land. 30

Additional duties and powers of bodies corporate.

19. (1) The duties of a body corporate within the meaning of the *Strata Titles Act* 1967 or the *Cluster Titles Act* 1974 which, by virtue of this Act, becomes a member of a body corporate in column 3 of an item in Schedule 3 include, in addition to the duties set forth in section 15 of the *Strata Titles Act* 1967, the duty— 35

- (a) to observe and comply with the by-laws in that item; and
- (b) to pay to the body corporate so specified any amount which that body corporate determines to be payable pursuant to section 16 of the *Strata Titles Act* 1967, and any such amount is an administrative expense for the purposes of section 16 of that Act. 40

(2) The powers of a body corporate within the meaning of the *Strata Titles Act 1967* or the *Cluster Titles Act 1974* which, by virtue of this Act, becomes a member of a body corporate in column 3 of an item in Schedule 3 include, in addition to the powers set forth in section 16 of the *Strata Titles Act 1967*, the power—

(a) for use, exercise and enjoy and to authorise its members to use exercise and enjoy, the rights and privileges pertaining to membership of the body corporate so specified; and

(b) to control and regulate the use, exercise and enjoyment of those rights and privileges by its own members—

but such a power shall not be exercised except in accordance with a resolution of the first-mentioned body corporate or on such other authority as the first-mentioned body corporate may from time to time, by resolution, determine.

Rates etc.

20. Any rate, tax, charge, outgoing or assessment payable in respect of a common allotment in an item in Schedule 3 may be levied or charged either upon the body corporate in that item or upon the registered proprietors of the primary allotments in that item in proportion to the unit liability of their respective units.

Body corporate not to hold certain property.

21. A body corporate in column 3 of an item in Schedule 3 has no power to hold any real property other than the common allotments in that item.

Rules.

22. (1) A body corporate in an item in Schedule 3 may, by special resolution, make rules for and with respect to any of the following:

(a) The care, protection and management of the common allotments in that item;

(b) The preservation of good order and decency on the common allotments in that item;

(c) The provision of all necessary services and facilities on common allotments in that item;

(d) The safety of persons on the common allotments in that item;

(e) The issuing of permits or licences and entering into agreements in relation to the common allotments in that item, including the granting of exclusive rights to moor boats within specified parts of the common allotments in that item;

(f) The imposition, collection and receipt of tolls, fees, rents and other charges for or in respect of entry upon, or use of, the common allotments or any specified part or parts of the

- common allotments in that item by any persons, animals, vehicles or boats or any improvements, services or facilities thereon;
- (g) Imposing a penalty, not exceeding two penalty units, for a contravention of the rules; 5
 - (h) Any other matter relating to the control, management, maintenance and administration of the common allotments in that item.
- (2) A rule relating to the entitlement to enter by means of defined access ways and use any area forming part of a common allotment in an item in Schedule 3— 10
- (a) may be made by the Governor in Council; and
 - (b) if it is made by the body corporate, must be approved by the Governor in Council before it is made.
- (3) A rule under this section is void if it is inconsistent with the provisions of this Act or the planning scheme for the time being in force relating to the Bayside land or any part of the Bayside land or the by-laws in force in that item. 15
- (4) A rule of a body corporate under this section (other than a rule to which sub-section (2) applies) is void— 20
- (a) if a copy of the rule has not been received by the Minister within 30 days after it is made; or
 - (b) if it is disallowed by the Governor in Council within 56 days after a copy is received by the Minister.
- (5) A body corporate incorporated by virtue of this Act must — 25
- (a) keep a record of its rules (including rules to which sub-section (2) applies) as in force for the time being; and
 - (b) make a copy of its rules (including rules to which sub-section (2) applies) available for inspection by any person at the body corporate's address for service of documents during normal business hours; and 30
 - (c) on application made by a person and on payment of such reasonable fee (if any) as is fixed by the rules, give the person a copy of its rules (including rules to which sub-section (2) applies) as then in force. 35

By-laws of body corporate.

23. (1) The by-laws of a body corporate in column 3 of an item in Schedule 3 are the by-laws in column 5 of that item as in force for the time being.
- (2) A body corporate may, by unanimous resolution, make by-laws, including by-laws amending or repealing by-laws referred to in sub-section (1). 40

(3) If a body corporate in column 3 of an item in Schedule 3 makes or amends a by-law under sub-section (2), the by-law so made or amended is void if it—

(a) is inconsistent with the provisions of this Act or the planning scheme for the time being in force relating to the Bayside land or any part of the Bayside land; or

(b) relates or purports to relate to matters other than—

(i) the control, management, administration, use or enjoyment of a primary allotment or a common allotment referred to in that item; or

(ii) the regulation of the body corporate; or

(iii) the exercise of the powers or performance of the duties by the body corporate or the conferring or imposing on the body corporate of powers or duties incidental to those conferred or imposed by or under this Act; or

(c) prohibits or restricts or purports to prohibit or restrict any devolution of or dealing with a primary allotment in that item in Schedule 3.

(4) An addition to, or amendment or repeal of, the by-laws or any of them under sub-section (2) has no effect until the record of the by-laws kept by the body corporate in accordance with sub-section (5) has been altered accordingly.

(5) A body corporate in an item in Schedule 3 must—

(a) keep a record of its by-laws as in force for the time being; and

(b) make a copy of the by-laws available for inspection by any person at the body corporate's address for service of documents during normal business hours; and

(c) on application made by a person, and on payment of such reasonable fee (if any) as is fixed by the by-laws, give the person a copy of the by-laws then in force.

(6) The by-laws in an item of Schedule 3 are binding on—

(a) the body corporate in that item; and

(b) the members of that body corporate; and

(c) insofar as they prohibit certain acts, any other person in actual occupation of a primary allotment in that item as if the person were a member of that body corporate—

and enure for the benefit of the body corporate and each member of the body corporate.

(7) A body corporate in an item in Schedule 3 and each member of such a body corporate is entitled to apply to the Court for an order—

(a) enforcing the performance of or restraining the breach of any by-law of the body corporate; or

(b) awarding damages for any loss or damage arising out of the breach of any by-law of the body corporate—
by any person on whom the by-law is binding.

Unit entitlement and unit liability.

24. (1) The unit entitlement or unit liability of a member of a body corporate in an item in Schedule 3 as determined by its by-laws or the plan of subdivision may be amended or altered only— 5

- (a) by unanimous resolution of the members of the body corporate; or
- (b) by operation of the by-laws of the body corporate upon consolidation or subdivision of land; or 10
- (c) by order of the Court upon the application of the body corporate, an administrator or a member.

(2) In determining an application to amend or alter the unit entitlement of a member of a body corporate in an item in Schedule 3, the Court shall have regard to the value of the primary allotments at the time the application is made. 15

(3) In determining an application to amend or alter the unit liability of a member of a body corporate in an item in Schedule 3, the Court shall have regard to the amount which it would be just and equitable to require each member to contribute towards the expenses of the body corporate in controlling managing and administering the common allotments in that item, in paying any premiums of insurance and in discharging or performing any other obligation which the body corporate is or may be required to discharge or perform under this Act or its by-laws. 20 25

(4) On an application to the Court under sub-section (1) (c), a person claiming to have any interest in the whole or any part of a primary allotment or land which at any time forms or at any time formed part of a primary allotment affected or that may be affected by the application has a right to appear and be heard. 30

Destruction of or damage to common property.

25. (1) If a building or other improvement on a common allotment in an item in Schedule 3 is damaged or destroyed, the Court may, on the application of a body corporate in any item in Schedule 3, an administrator or member of such a body corporate or a registered mortgagee of a primary allotment in any item in Schedule 3, by order settle a scheme, including provisions for the reinstatement in whole or in part of the building or other improvement. 35

(2) On any application to the Court under sub-section (1), a person claiming to have any estate or interest in the whole or any part of a primary allotment or land which at any time forms or at any time formed part of a primary allotment or a common allotment or any insurer who has effected insurance on the building or other 40

improvement on a common allotment has the right to appear and be heard.

(3) In the exercise of its powers under sub-section (1), the Court may make such orders as it deems expedient or necessary for giving effect to the scheme including any one or more of the following orders:

- (a) An order directing the application of any insurance money;
- (b) An order directing payment of money by or to a body corporate in any item in Schedule 3 or by or to any person;
- (c) An order for payment of costs as it thinks fit; or
- (d) An order imposing such terms and conditions as it thinks fit.

(4) The Court may cancel, vary, modify or discharge any order made by it under this section.

Rights in relation to open space.

26. (1) Subject to compliance with the rules of the body corporate relating to the area as in force for the time being, any person is entitled to enter upon by means of defined access ways and use any area forming part of a common allotment in an item in Schedule 3 being an area described as open space accessible to the public in an open space management prescription.

(2) A person who—

- (a) is a member of a body corporate in column 3 of an item in Schedule 3; or
- (b) is a member of a body corporate under the *Strata Titles Act* 1967 or the *Cluster Titles Act* 1974 that is a member of a body corporate so specified—

may use at any time the common allotments referred to in any item in Schedule 3 that is described as open space accessible to the public in an open space management prescription, subject to the by-laws in that item and the rules of the body corporate so specified.

Amalgamation of common allotments.

27. (1) Two bodies corporate each of which is specified in column 3 of an item in Schedule 3 may, by unanimous resolution of each body corporate, recommend to the Governor in Council that the whole or part of a common allotment vested in one of those bodies corporate be vested in the other of those bodies corporate.

(2) The Governor in Council may, by Order published in the *Government Gazette*, direct that the whole or part of a common allotment referred to in a recommendation under sub-section (1) be vested in the body corporate in accordance with the recommendation and that Schedule 3 be amended in accordance with the particulars set out in the Order.

(3) If an Order is made under sub-section (2), Schedule 3 is amended in accordance with the Order.

(4) If, on the making of an Order under sub-section (2), an item in Schedule 3 is deleted, the body corporate that was specified in that item ceases to exist.

(5) A body corporate in which, by reason of an Order under sub-section (2), a common allotment vests, shall forthwith notify the Registrar of Titles in writing of the making of the Order.

Amalgamation of items in Schedule 3.

28. (1) The Governor in Council may, on the unanimous recommendation of each of two or more bodies corporate in two or more items in column 3 of Schedule 3, by Order published in the *Government Gazette*, direct that those bodies corporate be amalgamated and form a new body corporate in which is vested the common allotments in those items and that a new item be included in Schedule 3 subject to and in accordance with the particulars set out in the Order.

(2) If an Order is made under sub-section (1), Schedule 3 is amended in accordance with the Order.

(3) A body corporate that was in an item in Schedule 3 that is deleted by reason of an Order under sub-section (1), ceases to exist.

(4) A body corporate created by reason of an Order under sub-section (1) shall forthwith notify the Registrar of Titles in writing of the making of the Order.

Items in Schedule 3.

29. (1) The Governor in Council may, by Order published in the *Government Gazette* declare—

(a) that a specified plan of subdivision of the Bayside land or any part of the Bayside land is a plan for the purposes of column 1 of an item in Schedule 3; and

(b) that the particulars of inclusion in that item are as set out in the Order; and

(c) that the by-laws applicable to the common allotments in that item are the by-laws set out in the Order—

and, upon approval of that plan of subdivision under the *Transfer of Land Act* 1958, that item is an item in Schedule 3.

(2) The Governor in Council may, on the unanimous resolution of a body corporate specified in column 3 of an item in Schedule 3 by Order published in the *Government Gazette*, direct that that item be amended in accordance with the Order.

(3) The Governor in Council must not make an Order under sub-section (2) unless satisfied that there are circumstances making it necessary or desirable so to do.

(4) A body corporate referred to in sub-section (2) must forthwith notify the Registrar of Titles in writing of the making of an Order under that sub-section.

PART 3—REFERENCES TO ARBITRATION

5 Panel of arbitrators.

30. (1) The Governor in Council may, on the nomination of the Minister, appoint suitable persons to be members of a panel of arbitrators for the purposes of this Act.

(2) The members of the panel of arbitrators—

10 (a) unless removed from office under sub-section (4), hold office for the period (not exceeding 5 years) which is specified in their instruments of appointment, but are eligible for re-appointment; and

15 (b) are not subject to the provisions of the *Public Service Act* 1974 in respect of their office as panel members.

(3) The Governor in Council may specify terms and conditions of appointment in the instruments of appointment of panel members.

(4) The Governor in Council may remove from office any member of the panel at any time.

20 (5) Any member of the panel may resign from office by writing to the Governor in Council.

References to arbitrators.

25 31. (1) A person who may make an application, reference, appeal, objection or agreement under or, with respect to a matter arising under—

(a) section 11 of the *Sale of Land Act* 1962; or

(b) Part IV or IX or section 79 of the *Building Control Act* 1981; or

(c) section 6 (7) of the *Strata Titles Act* 1967; or

30 (d) Part XIX of the *Local Government Act* 1958; or

(e) a request or requirement that the person enter into an agreement under section 173 of the *Planning and Environment Act* 1987; or

(f) section 11 of the *Cluster Titles Act* 1974; or

35 (g) a provision of an Act declared by Order of the Governor in Council to be a provision to which this Part applies—

40 being an application, appeal, objection or agreement in respect of a decision relating to a matter affecting the whole or any part of the Bayside land must, instead of making that application, reference, appeal, objection or agreement, make a reference to arbitration under this section by giving notice of the matter in the form prescribed by Order

of the Governor in Council published in the *Government Gazette* to a person who is so prescribed for the purposes of this section.

(2) If a person makes a reference to arbitration under this Part in relation to a decision in respect of a matter, an application, reference, appeal, objection or agreement may not be made by any person under the provisions of the Acts referred to in sub-section (1) in relation to the matter. 5

(3) As soon as practicable after receiving notice of a matter under sub-section (1), the prescribed person must appoint an arbitrator from the panel of arbitrators to determine the matter. 10

(4) Despite anything to the contrary in the *Commercial Arbitration Act* 1984 or any other Act, a matter which is capable of being referred to arbitration under this section is not justiciable in any court or tribunal.

(5) In this section “**decision**” has the same meaning as in the *Administrative Appeals Tribunal Act* 1984. 15

Arbitration.

32. (1) Subject to sub-section (2) and section 31, an arbitration under section 31 must be conducted in accordance with, and subject to the provisions of, the *Commercial Arbitration Act* 1984.

(2) In an arbitration under section 31— 20

(a) in addition to the powers conferred by the *Commercial Arbitration Act* 1984, the arbitrator has power to make a declaration as to the rights of the parties to the dispute and to grant injunctive relief in any case in which the Supreme Court would have power to make such a declaration or to grant such relief; and 25

(b) the fees and expenses of the arbitrator are borne jointly by the parties to the dispute unless the arbitrator is of the opinion that a party has behaved in a frivolous or vexatious manner in which case the arbitrator may make such order as to those fees and expenses as the arbitrator thinks just; and 30

(c) the parties to the dispute must bear their own costs unless the arbitrator is of the opinion that a party has behaved in a frivolous or vexatious manner in which case the arbitrator may make such order as to costs as the arbitrator thinks just. 35

PART 4—APPLICATION OF OTHER ACTS

Exemption from certain laws.

33. (1) The Governor in Council, on the recommendation of the relevant Ministers, may by Order published in the *Government Gazette* declare that the provisions of any Act or subordinate instrument 40

specified in the Order to the extent to which they are inconsistent with the development plan—

- 5 (a) do not have effect and shall be deemed never to have had effect in relation to the whole or any part of the Bayside land; or
- (b) have effect and shall be deemed always to have had effect as if varied as specified in the Order in relation to the whole or any part of the Bayside land so specified.
- 10 (2) A recommendation must not be made under sub-section (1) unless the relevant Ministers are satisfied that it is necessary or desirable for the purposes of this Act that the Order be made.
- (3) The Minister must cause a copy of an Order under sub-section (1) to be laid before each House of the Parliament within 10 sitting days after it is made.
- 15 (4) An Order may be revoked wholly or in part by a resolution passed by either House of the Parliament within 10 sitting days after the copy of the Order is laid before that House.
- (5) If an Order is revoked wholly or in part, the Order ceases to have effect from the beginning of the day on which the resolution was
20 passed.
- (6) The Minister must publish a notice of the revocation in the *Government Gazette*.
- (7) In this section—
- 25 “**Relevant Ministers**” in relation to an Order under sub-section (1) means the Minister administering this Act and any other Minister administering an Act which, or a subordinate instrument under which, is or would be affected by the Order.
- 30 “**Subordinate instrument**” has the same meaning as in section 3 of the *Interpretation of Legislation Act 1984*.

Exclusion of certain provisions of certain Acts.

- 35 34. (1) The provisions of section 569H of the *Local Government Act 1958* do not apply to any proposal to construct on the Bayside land any building or buildings pertaining to the development of that land until the expiration of 15 years after the date on which this Act receives Royal Assent or such longer period as the Governor in Council by Order approves.
- 40 (2) Land that is or forms part of a common allotment in Schedule 3 is not rateable property within the meaning and for the purpose of the *Local Government Act 1958*.
- (3) Land that is or forms part of a common allotment in Schedule 3 is not rateable by the Melbourne and Metropolitan Board of Works under the *Melbourne and Metropolitan Board of Works Act 1958* (save

for the making and payment of charges for water supplied and sewerage services provided by the Melbourne and Metropolitan Board of Works).

(4) Land that is or forms part of a common allotment in Schedule 3 is exempt from tax under the *Land Tax Act* 1958.

(5) Sub-sections (2), (3) and (4) only apply to land that is not used for commercial or residential purposes. 5

(6) An instrument for the conveyance or transfer or assignment of a lease to the Urban Land Authority, the Port of Melbourne Authority, the Metropolitan Transit Authority or the State Transport Authority of any part of the Bayside land is exempt from stamp duty under the *Stamps Act* 1958. 10

Excision of land from Port of Melbourne Authority land.

35. The Governor in Council may, by Order published in the *Government Gazette*, declare—

(a) that— 15

(i) any part or parts of the Bayside land shown cross-hatched on the plan in Schedule 1 or declared under section 3 (2) (b) to be part of that land that, immediately before the Order is made, were vested in the Port of Melbourne Authority cease to be so vested and are deemed to be unalienated Lands of the Crown; 20
or

(ii) if an Order referred to in sub-paragraph (i) has been made, any part or parts of the Bayside land referred to in such an Order are re-vested in the Port of Melbourne Authority; and 25

(b) that the Second Schedule to the *Port of Melbourne Authority Act* 1958 is deemed to be amended in accordance with the Order.

Exempt from special land tax. 30

36. Section 10 of the *Land Tax Act* 1958 does not apply to the Urban Land Authority, the Port of Melbourne Authority, the Metropolitan Transit Authority or the State Transport Authority in respect of any part of the Bayside land of which it is the owner.

***Building Control Act* 1981. 35**

37. Despite anything to the contrary in the *Building Control Act* 1981, the administration and enforcement of that Act in relation to the Bayside land shall be carried out by such person or body as the Minister administering that Act directs and in accordance with the directions of that Minister. 40

Local Government Act 1958, section 569B (8A).

38. The provisions of section 569B (8A) of the *Local Government Act 1958* do not apply in relation to any plan dividing the Bayside land within 15 years after the commencement of this section or within such longer period as the Governor in Council by Order approves.

Agreement under *Planning and Environment Act 1987*.

39. (1) A responsible authority may enter into an agreement under Division 2 of Part 9 of the *Planning and Environment Act 1987*—

- (a) in respect of a common allotment in an item in Schedule 3, with the body corporate in that item; or
- (b) in respect of a primary allotment in an item in Schedule 3, with the owner of the primary allotment.

(2) The holder of the duplicate certificate of title of a primary allotment must produce it to the Registrar of Titles to permit the registration of an agreement referred to in sub-section (1).

Restriction on development of certain land.

40. An authority or permit must not be given under the *Building Control Act 1981* or the *Planning and Environment Act 1987* for the development of, or the carrying out of any building work on, any part of the land shown hatched on the plan in Schedule 4 unless—

- (a) the Environment Protection Authority has declared that contamination in that part of the land as at the commencement of this section has been removed or treated to its satisfaction; and
- (b) the Minister administering this Act has consulted the Council of the City of Port Melbourne about the removal or treatment of the contamination.

Powers of Port of Melbourne Authority in relation to Princes Pier.

41. If the land on which Princes Pier is erected ceases to be vested in the Port of Melbourne Authority—

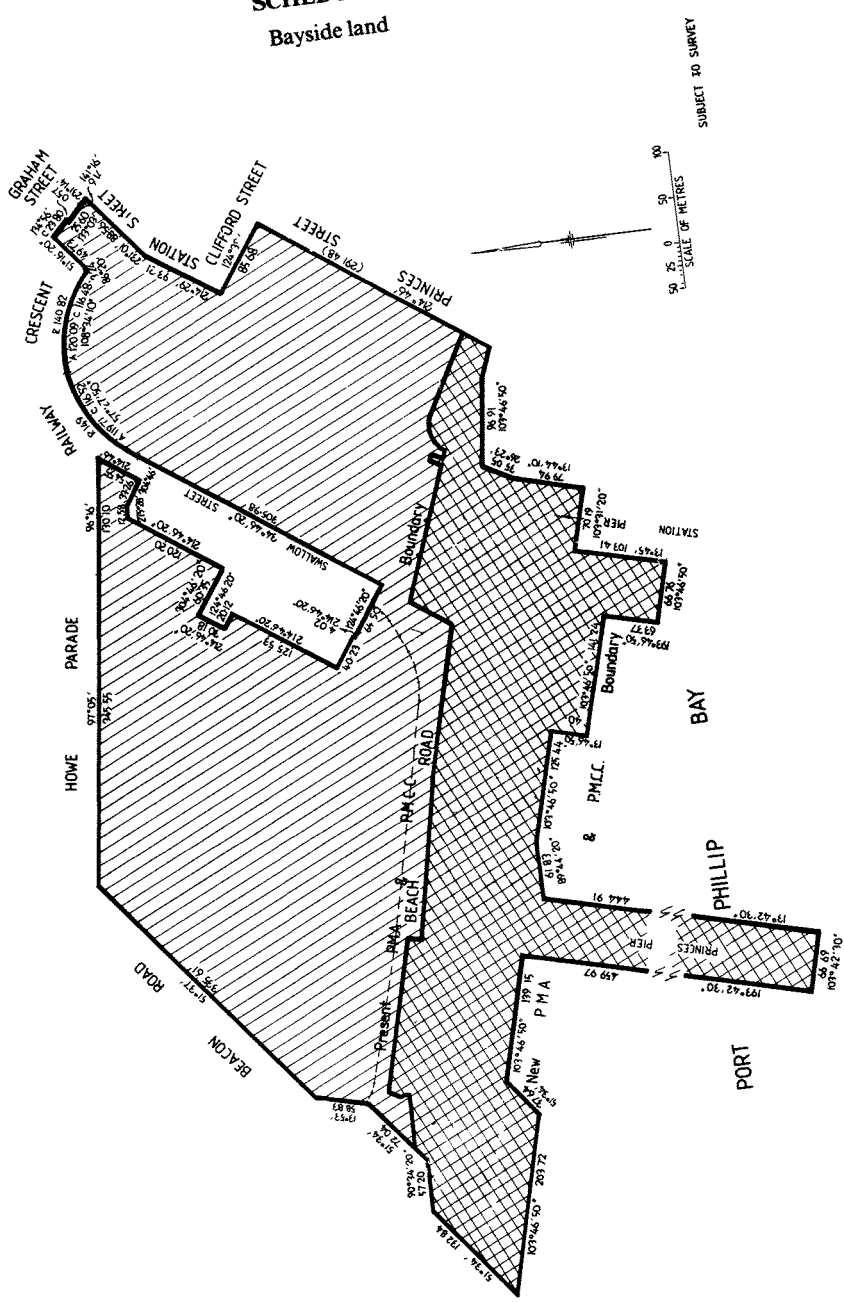
- (a) section 91 of the *Port of Melbourne Authority Act 1958* and any other provisions of that Act applicable to land not forming part of the Port of Melbourne apply in relation to the pier and the land on which it is erected; and
- (b) the Port of Melbourne Authority may from time to time erect and maintain on the pier or on the land on which it is erected such lights and beacons as the Authority considers necessary for the purpose of maintaining or improving navigation in the vicinity of the pier; and
- (c) unless the Port of Melbourne Authority has given its approval, works must not be undertaken on the land on which the pier is erected or by way of alteration of the pier if the works or alteration would in any manner affect the

operation of paragraph (b) or otherwise affect navigation in the vicinity of the pier.

Bayside Project

SCHEDULES
SCHEDULE 1
Bayside land

Section 3

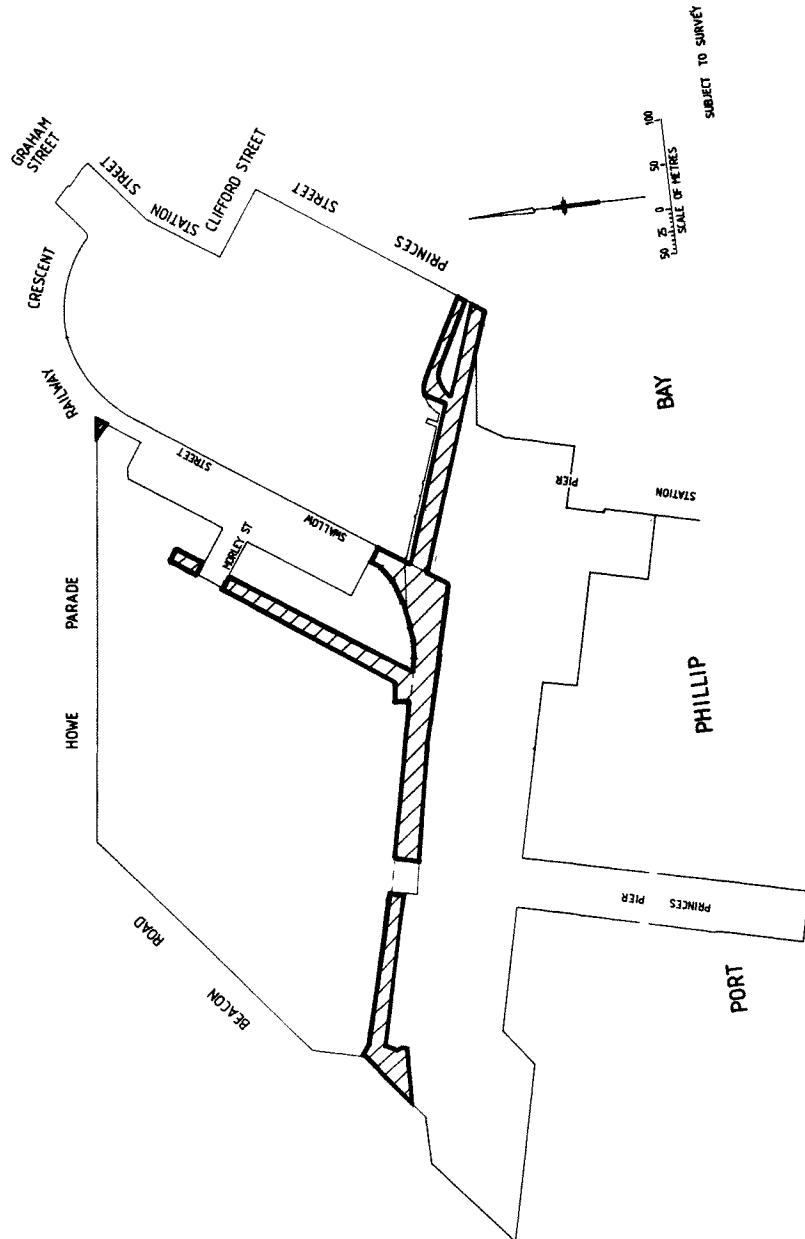


Sch. 2

Bayside Project

Section 9

SCHEDULE 2
Closure of roads



Sections 14 and 29

SCHEDULE 3
Plans of Subdivision

<i>Item</i>	<i>Column 1 Plan of Subdivision</i>	<i>Column 2 Primary Allotments (Lots on plan referred to in column 1)</i>	<i>Column 3 Name of Body Corporate</i>	<i>Column 4 Common Allotments (Lots on plan referred to in column 1)</i>	<i>Column 5 By-laws applicable to common allotments</i>
1					

SCHEDULE 4
Land on which development restricted

Section 40

