



PEOPLE AND BUSINESS
DIVISION

77 Grenfell Street
Adelaide SA 5000

GPO Box 1533
Adelaide SA 5001

Telephone: 08 8343 2222
Facsimile: 08 8204 8740

ABN 92 366 288 135

In reply please quote 2019/04171/01

**NOTICE OF DETERMINATION - REQUEST FOR ACCESS TO DOCUMENTS
UNDER THE FREEDOM OF INFORMATION ACT 1991**

I refer to your Freedom of Information application dated 28 March 2019 in which you requested the following:

Copy of Master Agreement referenced in registered lease 8976814 (Marina St Vincent) (Wirrina Cove)

There is 1 document within the scope of your request which I am releasing in full.

Attached is an explanation of the provisions of the Act which details your rights to review and appeal this determination, and the process to be followed.

In accordance with Premier and Cabinet Circular PC045, details of your application, and the documents to which access is given, may be published in the agency's disclosure log within 90 days from the date of this determination. Any private information will be removed. A copy of PC045 can be found at <http://dpc.sa.gov.au/what-we-do/services-for-government/premier-and-cabinet-circulars>. If you have any objection to this publication, please contact us within 30 days of receiving this determination.

Should you have any enquiries concerning your application please contact

Yours sincerely,

Sam Rodrigues
Accredited Freedom of Information Officer

15 April 2019

YOUR RIGHTS TO REVIEW

INTERNAL REVIEW

If you are dissatisfied or concerned with the decision of this Agency regarding access to documents or the request for amendment to your personal records, you can apply for an Internal Review of that decision.

To apply for an Internal Review you must write a letter addressed to the Principal Officer or lodge an Internal Review application form with the Principal Officer of this Agency. The legislated application fee must accompany all applications, unless the fee was waived in the original Freedom of Information application, in which case there would be no fee payable for the application. The application must be lodged within 30 days after being notified of the decision.

The Agency will undertake the Internal Review and advise you of its decision within 14 days of receipt of the application.

Where the decision was made by the Minister or Principal Officer of the Agency, you are unable to request an Internal Review but you can apply for an External Review by the Ombudsman, or SACAT.

You are unable to apply for an Internal Review regarding a decision to extend the time limit for dealing with an application but you can apply for an External Review.

EXTERNAL REVIEW BY THE OMBUDSMAN

If the Agency does not deal with your Internal Review application within 14 calendar days (or you remain unhappy with the outcome of the Internal Review) you are entitled to an External Review by the Ombudsman SA.

You may also request an External Review by the Ombudsman if you have no right to an Internal Review.

The application for review by the Ombudsman should be lodged within 30 days after the date of a determination. The Ombudsman's Office, at their discretion, may extend this time limit.

Investigations by the Ombudsman are free. Further information is available from the Office of the Ombudsman by telephone on 8226 8699 or toll free 1800 182 150 (within SA).

REVIEW BY THE SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (SACAT)

If you are still dissatisfied with the decision made by this Agency after an Internal Review or after a review by the Ombudsman, you can request a review from SACAT.

You must exercise your right of review to SACAT within 30 calendar days after being advised of the determination or the results of any other Internal or Ombudsman Review. Any costs will be determined by SACAT, where applicable. For more information, contact;

South Australian Civil and Administrative Tribunal (SACAT)

Phone: 1800 723 767

Email: sacat@sacat.sa.gov.au

SCHEDULE OF DOCUMENTS - FREEDOM OF INFORMATION APPLICATION NUMBER**2019/04171/01**

Document Number	Description of Document	Date of Document	Author	Determination	Schedule Clause Applied
				Release / Partial Release / Refuse Access	
001	Memorandum of Agreement	16 September 1996	DPTI	Release	

RELEASED UNDER FOIA

DATED: 16th DAY OF September 1996

MEMORANDUM OF AGREEMENT

BETWEEN

MINISTER FOR TOURISM
("the Minister")

- AND -

MINISTER FOR TRANSPORT
("the Transport Minister")

- AND -

MBR RESORTS PTY LIMITED (ACN 062 706 192)
("MBR")



SOUTH AUSTRALIA

CROWN SOLICITOR

9th Floor, 45 Pirie Street Adelaide SA 5000

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1. The Concept Plan
2. Plan of the Marina Site
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5. Form of the New Harbour Lease

THIS AGREEMENT is made the 16th day of September 1996.

BETWEEN

MINISTER FOR TOURISM a body corporate pursuant to the Administrative Arrangements Act, 1994 of 45 Pirie Street, Adelaide 5000 (herein after referred to as "the Minister")

AND

MINISTER FOR TRANSPORT a body corporate pursuant to the Administrative Arrangements Act, 1994 of STA House, North Terrace, Adelaide 5000 (herein after referred to as "the Transport Minister")

AND

MBfI RESORTS PTY LTD (ACN 062 706 192) whose registered office is situated at 145 South Terrace, Adelaide 5000 (herein after referred to as "MBfI")

RECITALS

- A. MBfI owns and operates Wirrina Cove.
- B. MBfI is undertaking major development and refurbishment works at Wirrina Cove.
- C. MBfI is developing a high standard marina and associated facilities at the Marina Site as part of the major development and refurbishment works being undertaken at Wirrina Cove.
- D. To enable MBfI to develop the marina and associated facilities referred to in Recital C it is proposed that the Existing Harbour Lease and Licence be surrendered and that the Transport Minister grant the New Harbour Lease to MBfI.
- E. The Minister has at the request of MBfI agreed to contribute an amount not exceeding the Minister's Budget to the capital cost of the design and construction of the Marina Infrastructure.
- F. This Agreement records the contractual provisions agreed between the parties in

relation to the tenure of the Marina Site, the development of the Marina and the Minister's contribution to the Marina Infrastructure.

NOW IT IS AGREED by and between the parties as follows:

1. **INTERPRETATION**

1.1 In the construction of this Agreement the following expressions shall have the meanings set opposite them respectively:

"the Concept Plan" means the concept plan for the development and construction of the Marina (including all on and off shore facilities) comprising Schedule 1;

"the Marina" means the marina to be developed and constructed by MBFI on the Marina Site in accordance with the Concept Plan and includes the Marina Infrastructure, the Essential Facilities and all other associated facilities (both on shore and off shore) to be developed for the purpose of operating a marina on the Marina Site;

"the Marina Infrastructure" means that part of the works for the construction of the Marina comprising the construction of breakwaters and the excavation of the Marina Basin;

"the Marina Basin" means that part of the Marina Infrastructure as is identified as "Marina Basin" on the Concept Plan;

"the Marina Site" means the area at Wirrina Cove identified as 1, 2, 3 and 5 on the Plan comprising Schedule 2;

"the Essential Facilities" means those facilities to be incorporated into the design of the Marina and identified on the Concept Plan as:

- navigational aids,
- safety aids and equipment,
- boat ramp (minimum 2 lanes),
- car and trailer park for a minimum of 20 cars and 60 car/trailers,
- toilets,
- washdown areas,
- waste disposal and pump-out station,
- refuelling depot

- minimum of 200 serviced berths comprising
 - * 170 private berths
 - * 30 berths for public use
- fire services facility

"the Bank Guarantee" means the irrevocable and unconditional bank guarantee for an amount equal to One Hundred and Ten per centum (110%) of the contract sum for all of the Essential Facilities to be lodged with the Minister by MBfI pursuant to subclause 2.3 of this Agreement.

"the Existing Harbour Lease and Licence" means the Agreement made 30th September 1981 between Minister of Marine and Holiday Village Co-operative Limited whereby the Minister of Marine granted to Holiday Village Co-operative Limited both a lease for thirty years (together with a right of renewal) over the land comprising Section 298 Hundred of Yankalilla and a licence to use and occupy the foreshore and sea bed identified on the Plan annexed to the Agreement.

"MBfI's Representative" means a person nominated in writing to both the Minister and the Transport Minister by MBfI as MBfI's Representative;

"Minister's Budget" means the amount (not exceeding \$8.5 million) to be contributed by the Minister to the cost of the design and construction of the Marina Infrastructure, such costs to include costs relating to testing, documentation, tendering and contract administration and also fees payable to ensure compliance with statutory and regulatory requirements relevant to such design and construction, but to exclude costs incurred in relation to the operation, maintenance and replacement of the Marina Infrastructure after practical completion thereof;

"Minister's Representative" means a person nominated in writing to MBfI by the Minister as the Minister's Representative;

"the New Harbour Lease" means a lease to be granted by the Transport Minister to MBfI over the Marina Site for the purpose of enabling MBfI to develop and construct the Marina thereon pursuant to the

terms of this Agreement;

"the Professional Certifier" means the appropriate professional consultant (architect, engineer, quantity surveyor or otherwise as the case may require) engaged by MBfI and approved by the Minister and required pursuant to any contract for the construction of the Marina Infrastructure to issue progress certificates pursuant to such contracts;

"SAICORP" means South Australian Government's Captive Insurance Corporation, a body corporate established pursuant to the Public Corporations Act, 1993;

"the Transport Minister's Representative" means a person nominated in writing to MBfI by the Transport Minister as the Transport Minister's Representative;

"Wirrina Cove" means the tourist resort situated on that piece of land comprising approximately Five Hundred and Fifty Four (554) hectares in area situated approximately three (3) kilometres south of Normanville in the State of South Australia as more particularly delineated on the plan comprising Schedule 3 and therein bounded in pink, and where appropriate to the context the expression "Wirrina Cove" shall be limited to a description of the land upon which the resort is situated.

- 1.2 Words denoting the singular number or plural number include the plural number and single number respectively.
- 1.3 Words denoting any gender shall include all genders.
- 1.4 The headings and clause numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of the clauses of this Agreement nor in any way affect this Agreement.
- 1.5 Any reference in this Agreement to natural persons shall where the context permits include corporations and vice versa.
- 1.6 If any of the covenants, obligations or stipulations on the part of any party hereto shall for any reason be invalid or unenforceable the validity and enforceability of all other provisions herein contained shall be in no way affected thereby.

- 1.7 A reference to writing shall be construed as including a reference to any mode of representing or reproducing words figures or symbols in a visible form.
- 1.8 Any consent, any notice any consultation or any other thing which pursuant to the terms of this Agreement is required to be given, done or performed by any party to this Agreement may properly and lawfully for the purposes of this Agreement be so given done or performed by the representative of the party required to consult give such consent, notice or do such other thing.
- 1.9 This Agreement contains the entire agreements between the parties in respect of the matters referred to herein and any variation to this Agreement shall be in writing attested by the parties hereto.
- 1.10 No addition to or variation of any provision of this Agreement shall be binding upon the parties unless made in writing and signed by all the parties to this Agreement.
- 1.11 In any circumstances where pursuant to the terms of this Agreement any demand or notice in writing is required to be given it shall be sufficient for the same to be given by notice in writing signed by the party giving such notice or for and on behalf of the party giving such notice by its solicitor or by its authorised agent and such demand or notice may be served by delivering the same personally, or by sending it through the post by prepaid mail addressed to the Minister at the office for the time being of the Chief Executive of South Australian Tourism Commission (in respect of notice given to the Minister), or addressed to the Transport Minister at the Office for the time being of the Chief Executive of the Department of Transport (in respect of notice given to the Transport Minister), or addressed to MBfI at 145 South Terrace, Adelaide 5000 (in respect of notice given to MBfI) or by facsimile transmission to such facsimile number as the parties may from time to time advise to each other for the purpose of this Agreement and such notice shall be deemed to have been given when delivered, or if sent through the post then at the time when the same would normally have been delivered in the ordinary course of the post, or if sent by facsimile

upon the sender's facsimile machine producing a transmission report that the facsimile was satisfactorily sent to the addressee's facsimile number.

- 1.12 Either party hereto may vary its address or facsimile number for service for the purpose of subclause 1.11 by notifying the other parties hereto in writing thereof.
- 1.13 Any reference in this Agreement to a statute, regulation or by-law shall include any statute, regulation or by-law amending, consolidating or replacing the statute, regulation or by-law referred to.
- 1.14 This Agreement shall be governed by and construed according to the law in force in the State of South Australia and the parties hereto submit to the jurisdiction of the courts of that State in respect of all matters arising hereunder or relating hereto.
- 1.15 The parties acknowledge and agree that the recitals hereto are true and accurate in every particular and shall form part of this Agreement.

2. CONDITIONS PRECEDENT

- 2.1 MBfI shall upon the execution of this Agreement for the purpose of developing the Marina upon the Marina Site obtain all necessary legislative approvals (including but not limited to such approvals as may be required pursuant to the Development Act, 1993) for the carrying out of such building and development works, such approvals to be obtained at the cost and expense of MBfI, subject only to such contribution as shall be made by the Minister in respect of such costs and expenses and as are included in the Minister's Budget.
- 2.2 MBfI will following its execution of this Agreement lodge with the Minister an irrevocable and unconditional bank guarantee for an amount equal to One Hundred and Ten per centum (110%) of the contract sum for all of the Essential Facilities under which a Bank guarantees to the Minister that MBfI will undertake and perform all its obligations for the development and construction of the Marina on the Marina Site pursuant to this Agreement as and when required by this Agreement.

- 2.3 The Bank Guarantee to be delivered by MBfI to the Minister shall be in a form approved by the Minister, be given by a bank licensed under the provisions of the Banking Act, 1959, which conducts its banking business in Australia and shall be payable by the Bank on demand by the Minister and shall be for an amount equal to One Hundred and Ten per centum (110%) of the contract sum for all of the Essential Facilities.
- 2.4 Subject to subclause 2.5 MBfI shall maintain the Bank Guarantee effective until the Marina is operational and MBfI has undertaken all its obligations pursuant to this Agreement.
- 2.5 The Minister acknowledges that he will progressively reduce the amount secured by the Bank Guarantee during the continuance of this Agreement to the extent and in the manner specified in Schedule 4.
- 2.6 This Agreement is subject to and other than clauses 1 and 2 shall have no force or effect unless and until:
- 2.6.1 MBfI has obtained all necessary legislative approvals for the purpose of developing and constructing the Marina upon the Marina Site pursuant to this Agreement as contemplated by subclause 2.1 of this Agreement, and
- 2.6.2 the Existing Harbour Lease and Licence is surrendered and the New Harbour Lease is granted by the Transport Minister to MBfI, and
- 2.6.3 the Bank Guarantee referred to in subclauses 2.2 to 2.5 of this Agreement has been lodged with the Minister.
- 2.7 If MBfI has not satisfied all conditions set out in subclause 2.6 by 31st day of December 1996 any party hereto may terminate this Agreement by written notice of such termination to the other parties to this Agreement. Upon the termination of this Agreement pursuant to this subclause no party hereto shall have any claim against another directly or indirectly arising out of this Agreement.

3. **DISPUTE RESOLUTION**

If a dispute shall arise between the parties during the continuance of this Agreement in respect of any matter arising out of or affecting the performance by either the Minister, the Transport Minister or MBfI of their respective obligations hereunder THEN the matter may, unless either the Minister, the Transport Minister or MBfI determine to exercise their right to have such dispute adjudicated by a court, be referred by either the Minister, the Transport Minister or MBfI for determination by a relevant expert agreed upon by the parties and failing agreement any party may request the President or Acting President for the time being of the Law Society of South Australia to nominate a relevant expert whose findings shall be final and binding on the parties in dispute and whose fees and expenses shall in any event be borne and paid by the parties in dispute in equal shares.

4. **AGREEMENT TO LEASE**

4.1 Upon all conditions precedent set out in subclauses 2.6.1 and 2.6.3 being fully satisfied and there being no existing or unremedied breach of the Existing Harbour Lease and Licence the Transport Minister and MBfI will at MBfI's expense surrender the Existing Harbour Lease and Licence.

4.2 The Transport Minister will upon the surrender of the Existing Harbour Lease and Licence thereupon grant to MBfI a lease of the Marina Site in the form and upon the terms set out in the form of lease annexed hereto and comprising Schedule 5 for a term of fifty two (52) years commencing on the day after the Existing Harbour Lease and Licence is surrendered together with a right of renewal for thirty (30) years thereafter, which lease MBfI agrees to accept.

4.3 The lease shall be prepared by the South Australian Crown Solicitor in the form of Schedule 5, and any stamp duty and/or registration fees payable thereon or in respect thereof shall be paid by MBfI. In preparing the said lease for execution the Crown Solicitor shall include therein:

4.3.1 the commencing date of the lease,

4.3.2 any formal additions and alterations which may be required to

enable the lease to be executed and registered,

4.3.3 any other additions or alterations which may be agreed between the parties.

4.4 The Transport Minister will upon being presented with both the lease duly executed by MBfI and funds equal to the amount estimated by the South Australian Crown Solicitor as being payable on account of stamp duty and registration fees in respect of the lease promptly, and in any event within twenty-one (21) days of such presentation of the lease to it for execution and payment of funds, execute the lease and deliver all executed copies thereof together with the amount remitted by MBfI on account of stamp duty and registration fees to the South Australian Crown Solicitor who will thereupon stamp and register the same. MBfI and the Transport Minister will from the date of commencement of the lease until the lease has been duly executed by both MBfI and the Transport Minister be bound by the terms and conditions and the covenants set out in the form of lease comprising Schedule 5 as if the same had been duly executed by MBfI and the Transport Minister as provided for in this clause.

5. DEVELOP AND CONSTRUCT THE MARINA

5.1 MBfI will at its own cost (subject to the Minister's contribution as set out in this Agreement) develop and construct the Marina at the Marina Site according to working drawings and specifications prepared in accordance with and consistent with the Concept Plan.

5.2 MBfI will appoint consultants for the purpose of undertaking the design (including physical modelling and testing) of the Marina so as to ensure that such design is substantially completed for both the Marina Infrastructure and the Essential Facilities by 30th September 1996 or by such other date as the Minister may in writing and in his discretion agree.

5.3 MBfI will for the purpose of the development and construction of the Marina be responsible for:

5.3.1 undertaking the design (including physical modelling, studies and

testing) of the Marina;

- 5.3.2 developing all plans (including all working drawings and specifications) for the Marina;
- 5.3.3 obtaining all consents, approvals, authorisations and licences which may be necessary by virtue either of legislative or regulatory requirements or by reason of the proper requirement of any Governmental, semi Governmental or local Governmental agency or instrumentality;
- 5.3.4 calling and assessing tenders and with the Minister's consent letting the necessary contracts for the development and construction of the Marina;
- 5.3.5 ensuring that the Marina is developed and constructed in accordance with the plans and specifications therefor, and subject to any matters beyond the reasonable control of MBfI within the budget for such development and construction approved by both MBfI and the Minister;
- 5.3.6 ensuring that subject to any matters beyond the reasonable control of MBfI the Marina Infrastructure and the Essential Facilities are practically complete and that the Marina is operational within twenty four (24) calendar months after the commencement date of the New Harbour Lease.

The parties to this Agreement acknowledge that the Essential Facilities will not be accepted as practically complete and the Marina operational until the navigational aids are functioning and operational and all safety aids and equipment reasonably required by the Transport Minister have been installed.

- 5.4 MBfI will in designing the Marina and developing the plans and specifications therefor:

- 5.4.1 ensure that the works comply with all relevant legislation, all relevant published Australian Standards and with recognised "best practice" for the design of marinas;
- 5.4.2 ensure that all design work (including all plans, working drawings and specifications) incorporates appropriate technology to meet

the requirements of all regulatory authorities (including but not limited to Environment Protection Authority, Development Assessment Commission, South Australian Health Commission, the South Australian Ports Corporation, District Council of Yankalilla and the Department of Transport) with regard to:

- noise,
- odours,
- energy efficiency,
- washdown areas
- fuel dispensing
- marine pollution and spillages
- disposal of solids and wastes
- marine safety and navigation

5.4.3 consult with and seek the comments of the Minister's Representative to all design proposals and plans (including working drawings and specifications) for the Marina.

5.5 MBfI will in calling and evaluating tenders for and awarding contracts for the construction and installation of the Marina:

5.5.1 formulate and draft all tender documents and all calls for tenders for the construction of the Marina in consultation with the Minister's Representative, and comply with all government requirements relating to the contents of such documents and the process for the calling of tenders for contracts to undertake the construction of the works comprising the Marina;

5.5.2 consult with the Minister's Representative regarding the appropriate method of tender, the evaluation and assessment of tenders, and the awarding of any contract for the development and the construction of the Marina;

5.5.3 have regard to the following criteria (inter alia) in the evaluation and awarding of contracts for the development and construction of the Marina:

- the ability of the tenderer to undertake and complete the work tendered for within the time specified and for the

price tendered,

- the previous experience of the tenderers,
- the tendered price,
- the plant and equipment to be used,
- the personnel to be used,
- the financial guarantees available to and offered by tenderers,
- the extent (if any) of professional indemnity insurance held by tenderers and extending to this project,
- such other criteria as MBfI's consultants may recommend.

5.5.4 prior to awarding any contract relating to the Marina Infrastructure obtain the written agreement of the Minister to the contract sum (including the Minister's Budget) in respect of the proposed contract (which agreement will not be unreasonably withheld);

5.5.5 prior to awarding any contract relating either to the Marina Infrastructure or to the Essential Facilities consult with the Minister's Representative regarding the date for practical completion in respect of any such contract;

5.5.6 prepare and execute all such contracts with MBfI as the contracting party and principal in each of the contracts.

5.6 MBfI will for the purpose of ensuring that the Marina Infrastructure and the Essential Facilities are developed and constructed according to the plans (including working drawings and specifications) and within the budgets (including within the Minister's Budget approved by the Minister in respect of the Marina Infrastructure), and according to contracts awarded for the construction and installation of the Marina Infrastructure and the Essential Facilities:

5.6.1 adopt appropriate project administration practices to ensure that the cost of design and construction of the Marina Infrastructure and the Essential Facilities is minimised having regard to the standards required for the development and construction of the Marina;

5.6.2 ensure that the development and construction works are competently co-ordinated and supervised at a high standard,

5.6.3 deliver to the Minister contractors work schedules acceptable both to the Minister and MBfI setting out strategies and procedures for:

- within the budget minimising the cost to the principal to the extent that preservation of standards of workmanship and materials specified in the plans and specifications for the Marina Infrastructure and the Essential Facilities permits,
- ensuring due expedition without delay in respect of the development and construction works,
- the keeping of all financial records relating to the capital cost of the Marina Infrastructure and the Essential Facilities, and making the same available for auditing and accountability purposes,
- reporting monthly to both MBfI and the Minister on the progress of works pursuant to contracts for the construction of the Marina Infrastructure and the Essential Facilities,
- determining the relevant construction costs of the Marina Infrastructure and the Minister's Budget,
- permitting inspection of the works relating to the Marina Infrastructure and the Essential Facilities by the Minister's Representative.

5.6.4 ensure that all construction works are completed in a good and workmanlike manner using good and proper materials fit for the purpose for which they are to be used and to a standard satisfying applicable best building industry design, constructions and practice,

5.6.5 ensure that no extensions of time for practical completion of any of the works comprising the Marina Infrastructure are granted without the prior written consent of the Minister's Representative

unless such extensions of time are strictly required to be granted pursuant to the provisions of the relevant contract,

5.6.6 ensure that no variations are authorised in respect of any of the works comprising the Marina Infrastructure without the prior written consent of the Minister's Representative to such variation if such variation will have the effect of either increasing the Minister's Budget or extending the date for practical completion of the Minister's Infrastructure,

5.6.7 permit the Minister's Representative and/or the Transport Minister's Representative to inspect the development and construction works in respect of the Marina Infrastructure and the Essential Facilities from time to time during the progress of such works provided that the Minister's Representative and/or the Transport Minister's Representative as the case may be gives to MBfI's Representative not less than 24 hours prior notice of his requirement to so inspect and complies with all reasonable requirements of MBfI in conducting any such inspection. Without limiting the powers of either the Minister's Representative or the Transport Minister's Representative to inspect the development and construction works comprising the Marina Infrastructure such works shall be inspected by both the Minister's Representative and the Transport Minister's Representative immediately prior to the issue of both the Certificate of Practical Completion and the Final Certificate for all works comprising the Marina Infrastructure,

5.6.8 permit the Minister's Representative and the Transport Minister's Representative to attend and participate in all site meetings relating to the Marina Infrastructure and the Essential Facilities.

6. THE MINISTER'S OBLIGATIONS

6.1 The Minister's Representative will in the manner and to the extent required by this Agreement (particularly as set out in subclauses 5.4.3

and 5.5.2) promptly consult with and provide such comments to MBfI's Representative as are within the experience, expertise or knowledge of the Minister's Representative to provide **PROVIDED THAT** and MBfI acknowledges that other than in any situation where the written agreement or approval of the Minister is required it will rely on its own judgement in determining whether and if so to what extent it will have regard to the comments of the Minister's Representative and in this regard MBfI releases the Minister (together with the Minister's Representative) from all claims demands proceedings judgements damages and costs of any kind which it might suffer or incur as a result of relying on or having regard to the comments of the Minister's Representative.

- 6.2 The Minister will contribute an amount equal to the Minister's Budget to the cost of design and construction of the Marina Infrastructure.
- 6.3 The parties acknowledge that the amount to be contributed by the Minister pursuant to subclause 6.2 to the cost of designing and constructing the Marina Infrastructure shall in no event exceed the lesser of either the cost of designing and constructing the Marina Infrastructure up to and including the issue of the Final Certificate therefor (having regard to the factors set out in this Agreement for determining the amount of the Minister's contribution), or \$8.5 million.
- 6.4 In determining the Minister's Budget the following costs shall be included therein:
 - 6.4.1 the cost of design (including physical modelling, testing and studies) and documentation (including the cost of all plans, working drawings and specifications) for the Marina Infrastructure,
 - 6.4.2 the costs of procurement, all other costs associated with tendering and assessment/evaluation of tenders, and all costs associated with the awarding of contracts for the construction of the Marina Infrastructure,
 - 6.4.3 contract administration costs in respect of contracts for the construction of the Marina Infrastructure,

6.4.4 the capital cost of construction of the Marina Infrastructure by virtue of the contracts referred to in this subclause 6.4,

6.4.5 reasonable and relevant fees associated with the costs to be included in the Minister's Budget,

BUT in determining the Minister's Budget the premiums and costs associated with effecting and maintaining the insurances required by clause 8 of this Agreement, the costs of maintaining both the entrance channel to the Marina and the excavated basin for the Marina to a depth specified in the plans for the Marina, and also the costs of and incidental to the maintenance and operation of the Marina following practical completion thereof shall all be excluded.

6.5 The Minister's contribution provided for in subclause 6.2 shall be paid by progress payments during the construction of the Marina Infrastructure. Each progress payment shall be paid at the same time as MBfI is required to make progress payments pursuant to any contract awarded for the construction of the Marina Infrastructure, and in this regard each progress payment shall be made within 14 days after both the issue of each progress certificate by the Professional Certifier and the service of such progress certificate on the Minister, and shall be made to such person as MBfI shall in writing direct, and the receipt of such person for such progress payment shall be a complete release and discharge to the Minister in respect of his obligation to MBfI to make such payment.

6.6 MBfI shall ensure that whenever it requests the payment of a progress payment pursuant to subclause 6.5:

6.6.1 the Professional Certifier's certificate shall certify that the amount of any progress payment has been properly incurred by MBfI in accordance with this Agreement, and

6.6.2 that any certificate given under a construction contract to which the relevant progress payment relates is produced to the Minister's Representative for noting.

6.7 Any part of the Minister's Budget which does not form part of any progress payment payable by MBfI pursuant to a contract awarded for

the construction of the Marina Infrastructure shall be reimbursed by the Minister to MBfI within thirty (30) days after the Minister receives evidence from MBfI that the payment to which such contribution relates has in fact been paid by MBfI.

- 6.8 MBfI shall during the continuance of this Agreement establish and keep full and accurate financial records of all costs incurred by it in developing and constructing the Marina, such records to be formulated so as to separately identify the costs incurred by MBfI in constructing the Marina Infrastructure and so as to enable the Minister and MBfI to establish and verify which costs and expenses incurred by MBfI form part of the Minister's Budget.
- 6.9 MBfI shall permit the Minister's Representative or any employee of the Minister or any accountant engaged by the Minister for the purpose to verify the costs incurred by MBfI in developing and constructing the Marina (including the Marina Infrastructure), and in that regard will permit the Minister's Representative, any employee of the Minister, or any accountant engaged by the Minister upon giving reasonable prior notice to MBfI's Representative to inspect and copy such portion of MBfI's accounts and records relating to the development and construction of the Marina as may be necessary for that purpose.

7. PUBLIC WORKS COMMITTEE

- 7.1 The parties acknowledge that the construction and installation of the Marina provided for in this Agreement is a "public work" for the purposes of the Parliamentary Committees Act, 1991 and as such is required to be referred to the Public Works Committee for inquiry and report.
- 7.2 The Minister will if required, respond promptly to the Public Works Committee report on the design, development and construction of the Marina.
- 7.3 The Minister and MBfI will both at their own respective cost and expense if required by the Public Works Committee promptly provide such evidence and information to that Committee (including providing

representatives to appear before that Committee) as the Committee may be legally entitled to require.

8. **INSURANCE**

8.1 MBfI will for the purpose of developing and constructing the Marina ensure that the following insurances are effected and maintained at all relevant times (all premiums and costs associated with effecting and maintaining such insurance to be excluded from the Minister's Budget):

8.1.1 all consultants shall be adequately insured against professional negligence type claims;

8.1.2 all contractors have effected an adequate "Construction Risks Insurance Policy" which covers material loss or damage to works during construction, and public liability insurance in which the limits of public risk shall not be less than Twenty Million Dollars (\$20,000,000.00) which may be paid arising out of any one single accident or event and shall include claims arising out of the action of contractors and sub-contractors, and further shall have the Transport Minister's interest endorsed thereon;

8.1.3 such other insurances as either the Minister or the Transport Minister on the advice of SAICORP may reasonably require.

8.2 MBfI will obtain the prior approval of the Transport Minister to the terms of all insurance effected pursuant to subclause 8.1.

8.3 The parties acknowledge that if the Transport Minister approves any policy of insurance to be effected pursuant to subclause 8.1 then for all purposes of this Agreement such insurance shall be accepted as adequate.

8.4 MBfI will ensure that immediately upon practical completion of the building and development works for the Marina it will insure and thereafter maintain at its cost and expense (including the payment of all premiums) insurance in the names of MBfI and the Transport Minister for their respective rights and interests in respect of all buildings, structures, erections and fixed improvements (including but not limited to the Marina Infrastructure) comprising the Marina such insurance to

be against all risks which the prudent owner and operator of a marina would normally insure against (including but not limited to material damage and public liability) and be maintained to the full replacement value thereof.

9. MISCELLANEOUS

The Minister, the Transport Minister and MBfI, and their respective representatives will perform their duties and obligations pursuant to this Agreement conscientiously and in a timely manner.

EXECUTED as an AGREEMENT

THE COMMON SEAL of MINISTER FOR

TOURISM was hereto affixed by authority

of the Minister in the presence of:


11504



THE COMMON SEAL of MINISTER FOR

TRANSPORT was hereto affixed by authority

of the Minister in the presence of:

.....

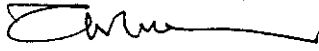


THE COMMON SEAL of MBFI RESORTS

PTY LIMITED (ACN 062 706 192)

was hereunto affixed by authority of

the directors and in the presence of:

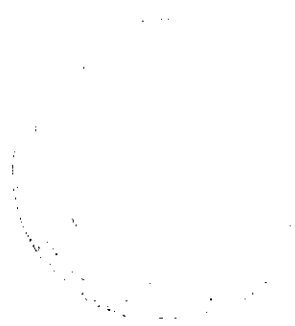


.....
Director



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Director/Secretary

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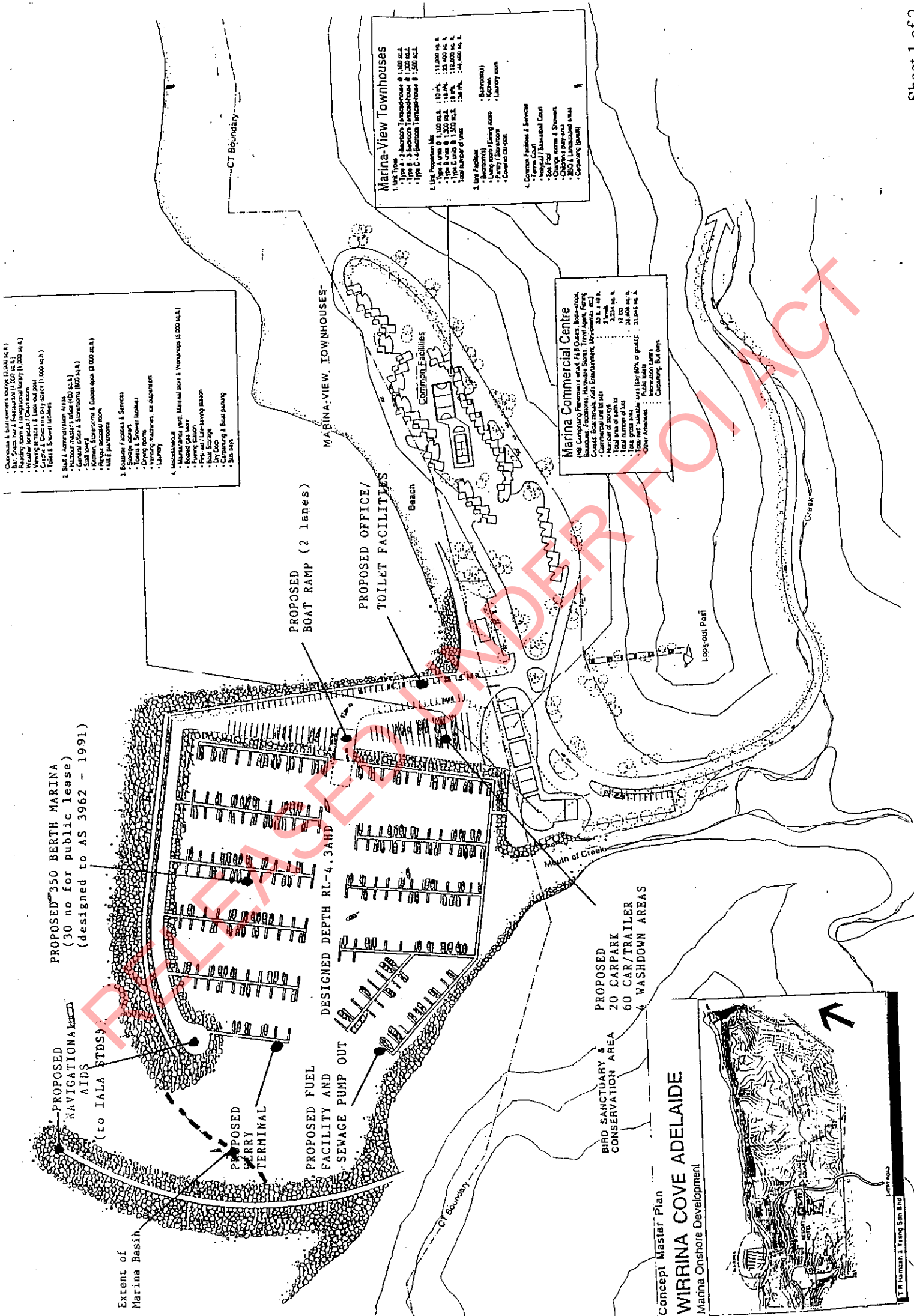


RELEASED UNDER FOI ACT

SCHEDULE ONE

THE CONCEPT PLAN

RELEASED UNDER FOI ACT



NOTES FOR CONCEPT PLAN

1. **Navigational Aids**

Navigational aids will be installed in accordance with the requirements of the Department of Transport, Marine Safety Division. They will also comply with the requirements of the International Association of Lighthouse Authorities (IALA).

2. **Vessel Size**

The marina has been designed to accommodate vessels up to 30 metres in length. However, a single heavy duty berth is also anticipated to accommodate ferry vessels up to 50 metres near the marina entrance. The safe access of the ferry vessels will be dependent on the extent of their control systems and vessel type. An assessment will be required by the Department of Transport, Marine Safety Division.

3. **Marina Basin Water Depth**

The harbour is to be excavated to RL -4.3 metres Australian Height Datum (ADH). This will provide at very low tides at least 3 metres depth of water in the marina basin.

4. **Harbour Approaches**

Proceeding north out of the harbour entrance the natural water depth increases from RL -4.3 metres AHD out into deeper water. This means that the minimum water depth of 3 metres at very low tide continually increases seaward from the harbour entrance in the approach channel. Markers required to define the harbour approach channel will be installed according to the requirements of the Department of Transport, Marine Safety Division in compliance with the international requirements defined by PLANCO.

5. **Marina Berth/Layout Design**

The marina berths and marina layout will be designed in accordance with the Australian Standard AS 3962 - 1991 "Guidelines for design of marinas".

6. **Breakwaters and Excavated Marina Basin**

The breakwaters and excavated marina basin will be constructed in accordance with Specification No. 194236 - Wirrina Cove: The Construction of a Sheltered Harbour prepared by Dare Sutton Clarke Pty Ltd & John Chappell Engineers.

SCHEDULE TWO

PLAN OF THE MARINA SITE

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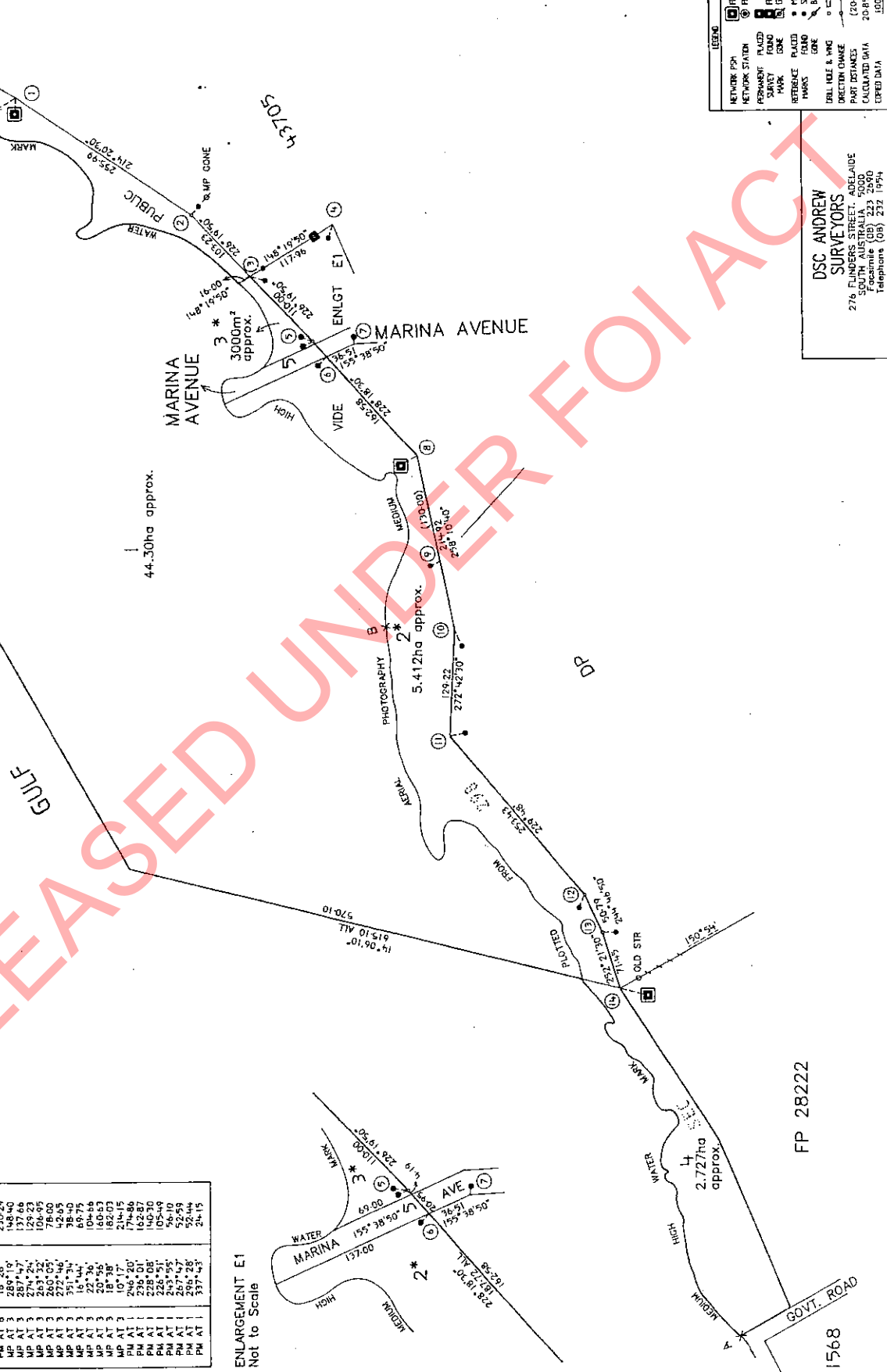
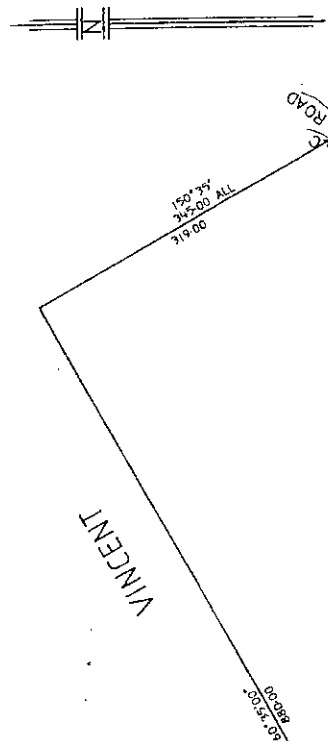
SCHEDULE	FROM	BRG	DIST
	PM AT 8	278' 23"	201.97
	PM AT 8	279' 49"	152.38
	PM AT 8	270' 18"	97.56
	PM AT 8	270' 46"	76.01
	PM AT 8	270' 47"	35.45
	PM AT 8	325' 22"	35.47
	PM AT 8	325' 22"	36.11
	PM AT 8	335' 16"	43.82
	PM AT 8	37' 00"	83.30
	PM AT 8	21' 00"	132.48
	PM AT 8	21' 00"	132.48
	PM AT 8	15' 30"	185.71
	PM AT 8	15' 30"	213.40
	PM AT 8	15' 30"	230.29
	PM AT 8	15' 26"	168.40
	MP AT 3	289' 19"	137.66
	MP AT 3	283' 47"	137.66
	MP AT 3	283' 47"	106.93
	MP AT 3	260' 05"	76.00
	MP AT 3	260' 05"	42.05
	MP AT 3	272' 46"	4.85
	MP AT 3	331' 34"	38.40
	MP AT 3	331' 34"	67.75
	MP AT 3	331' 34"	67.75
	MP AT 3	283' 47"	60.53
	MP AT 3	283' 47"	82.03
	MP AT 3	18' 38"	121.45
	MP AT 3	19' 17"	174.86
	PM AT 1	246' 20"	174.86
	PM AT 1	238' 08"	162.87
	PM AT 1	238' 08"	162.87
	PM AT 1	226' 51"	105.49
	PM AT 1	243' 55"	56.10
	PM AT 1	243' 47"	52.53
	PM AT 1	258' 23"	52.44
	PM AT 1	258' 23"	52.44

SCHEDULE OF PIECES COMPRISED IN ONE ALLOTMENT		
PIECES COMPRISED IN ONE ALLOTMENT	TOTAL AREA	
2 AND 3	5-712ha app.	

* Asterisk denotes PIECE Identifier only.
NOTE: All remaining parcels are each on allotment.

SCHEDULE OF PIECES COMPRISED IN ONE ALLOTMENT		
PIECES COMPRISED IN ONE ALLOTMENT	TOTAL AREA	
2 AND 3	5,712sq. app.	

* Asterisk denotes PIECE identifier only.
NOTE: All remaining parcels are each on allotment.



FP 28222

1568

**DSC ANDREW
SURVEYORS**

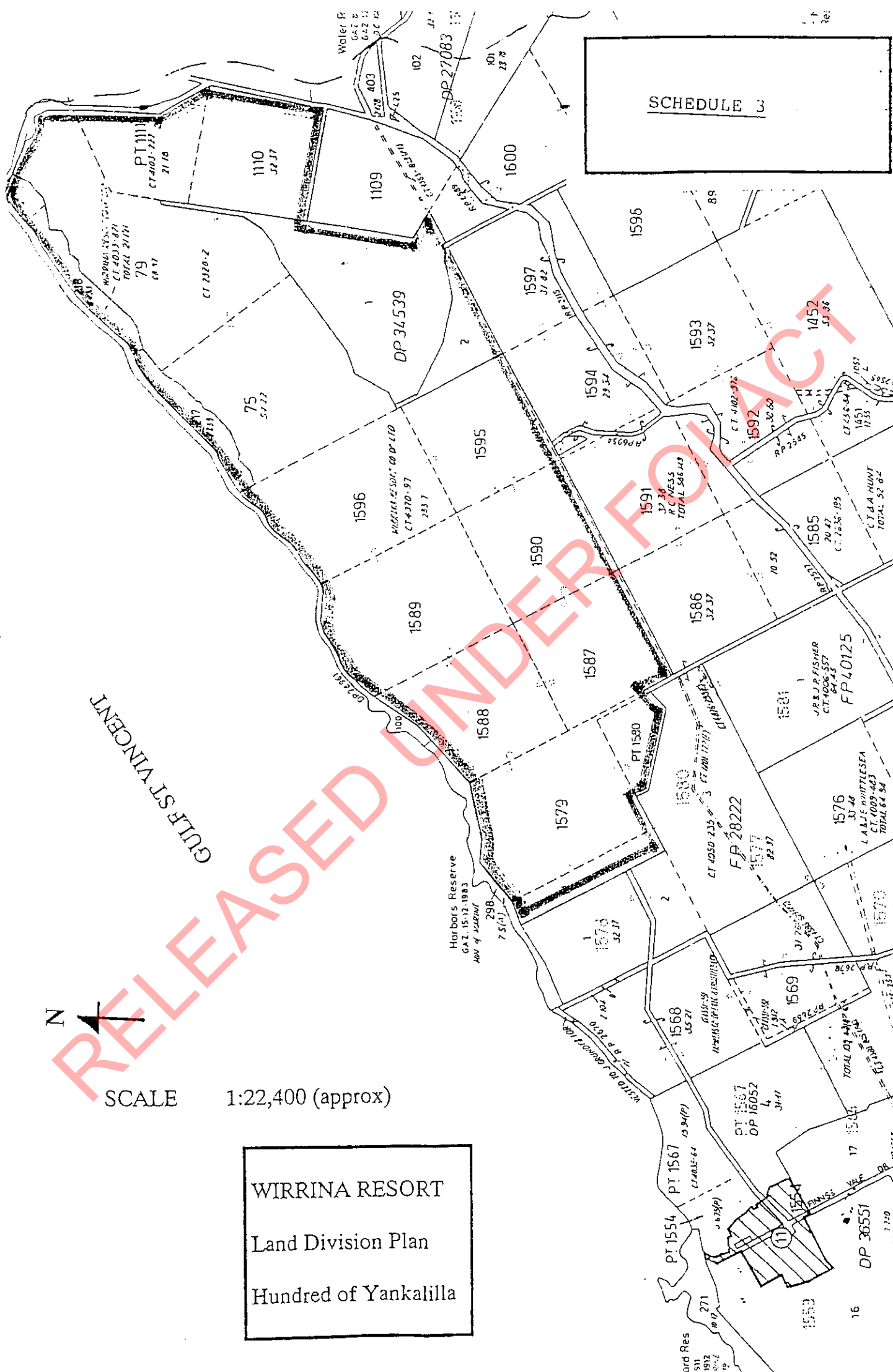
276 FLINDERS STREET, ADELAIDE
SOUTH AUSTRALIA 5000
Facsimile (08) 223 2690
Telephone (08) 232 1954

NO OCCUPATION UNLESS OTHERWISE S	COPIED SCALE FACTOR 1.00037	DATE
A TO B IS MEDIUM HIGH WATER MARK	MEASURING TAPE 55' 4 1/2" 0	
FROM GROUND MEASUREMENTS TAKEN	DATE 01/05/26 0526/1093-8527/2046	
JUN 1986.		
B TO C IS MEDIUM HIGH WATER MARK	LOCATED SURVEY OF SOUTH ADJACENT TO HERBY C	
FROM AERIAL PHOTOGRAPHY.	L. GRANT, GLENN, MARIN.	
	1) THIS PLAN HAS BEEN MADE FROM SURVEYS CARRI	
	ED OUT BY PERSONAL SUPERVISION AND IN ACCORDANCE	
	WITH THE 1992 / STRATA TITLE ACT 1982 (ACT)	
	2) THE SURVEY WAS COMPLETED ON THE	
	6 th DAY OF JUNE 1996	
	3) THE SURVEYING DATA WAS OBTAINED BY	
	RECORDING THE SURVEY DATA	
	ON THE 17-6-96	

SCHEDULE THREE

PLAN OF WIRRINA COVE

RELEASED UNDER FOI ACT



SCHEDULE FOUR

REDUCTION OF BANK GUARANTEE

The amount secured by the Bank Guarantee shall be progressively reduced during the continuance of this Agreement in the circumstances and in the manner following:

1. MBfI may by written notice to the Minister's Representative request that the amount secured by the Bank Guarantee be reduced by an amount equal to each progress payment made by MBfI pursuant to any contract awarded for the construction or provision of the Essential Facilities PROVIDED THAT:
 - (a) MBfI may not make any such request more frequently than once per calendar month, and
 - (b) the minimum amount by which MBfI may request the amount secured by the Bank Guarantee to be reduced in any one month is \$100,000.00.
2. The Minister will at MBfI's expense upon receiving a written request to reduce the amount secured by the Bank Guarantee in accordance with clause 1 of this Schedule AND upon receiving from MBfI:
 - (a) a copy of the certificate certifying that the amount of any progress payment payable pursuant to a contract awarded for the construction or provision of Essential Facilities has been properly incurred pursuant to the relevant contract, and
 - (b) evidence that the progress payment as certified has in fact been paidtake such action (including signing such documents as the bank may reasonably require) as may be necessary to reduce the amount secured by the Bank Guarantee by the amount determined by clause 1 of this Schedule.

SCHEDULE FIVE

FORM OF THE NEW HARBOUR LEASE

Refer existing lease

RELEASED UNDER FOI ACT