

South Australia



ANNO QUINQUAGESIMO
ELIZABETHAE II REGINAE
A.D. 2001

**WEST BEACH RECREATION RESERVE (REVIEW) AMENDMENT
ACT 2001**

No. 52 of 2001

[Assented to 1 November 2001]

An Act to amend the West Beach Recreation Reserve Act 1987.

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SCHEDULE 1**SCHEDULE 2***Further amendments of principal Act*

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *West Beach Recreation Reserve (Review) Amendment Act 2001*.

(2) The *West Beach Recreation Reserve Act 1987* is referred to in this Act as "the principal Act".

Commencement

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

Substitution of s. 4

3. Section 4 of the principal Act is repealed and the following section is substituted:

Interpretation

4. In this section, unless the contrary intention appears—

"land" includes land covered (or covered from time to time) by water;

"Reserve" means—

- (a) land owned by, or vested in, the Trust; and
- (b) land occupied by the Trust under a lease, licence or other arrangement; and
- (c) land of which the Trust has the care, control and management;

"Trust" means the West Beach Trust continued under this Act.

Substitution of s. 7

4. Section 7 of the principal Act is repealed and the following section is substituted:

Membership of Trust

7. (1) The Trust consists of seven members appointed by the Minister, of whom—

- (a) one must be a person from a panel of three persons nominated by the City of Charles Sturt; and
- (b) one must be a person from a panel of three persons nominated by the City of Holdfast Bay; and
- (c) one must be a person from a panel of three persons nominated by the City of West Torrens; and
- (d) the remainder will be selected by the Minister.

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

- (a) any person nominated by a council, or otherwise selected by the Minister for appointment, must have qualifications or experience in—

- (i) business or management; or
 - (ii) tourism; or
 - (iii) accounting and financial; or
 - (iv) environmental protection and management; or
 - (v) the provision or operation of regional recreation facilities; or
 - (vi) government; and
- (b) a council, in constituting a panel—
- (i) must nominate at least one woman and one man; and
 - (ii) must give reasonable consideration to nominating persons who provide a range of the qualifications and experience referred to above; and
 - (iii) need not nominate persons who are members or employees of the council.

(3) At least two members of the Trust must be women and at least two must be men.

(4) The Minister will appoint a member of the Trust to be its presiding officer and another to be its deputy presiding officer.

(5) The Minister should, before making an appointment under subsection (1), consult with persons who, in the opinion of the Minister, have an interest in the matter.

Amendment of s. 8—Conditions of membership

5. Section 8 of the principal Act is amended—

(a) by striking out subsections (1), (2), (3) and (4) and substituting the following subsections:

(1) A member of the Trust will be appointed for a term, not exceeding four years, specified in the instrument of appointment and will, at the expiration of a period of appointment, be eligible for reappointment.

(2) The Minister may remove a member of the Trust from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for misconduct; or

(c) for failure or incapacity to carry out official duties satisfactorily; or

(d) if serious irregularities have occurred in the conduct of the Trust's affairs or the Trust has failed to carry out its functions satisfactorily and the Trust's membership should, in the opinion of the Minister, be reconstituted for that reason.;

- (b) by striking out from subsection (5)(f) "subsection (4)" and substituting "subsection (2)";
- (c) by striking out from subsection (6) "until a fresh appointment is made to replace him or her" and substituting "until he or she is reappointed or a successor is appointed (as the case may be)".

Amendment of s. 10—Disclosure of interest

6. Section 10 of the principal Act is amended—

- (a) by striking out the penalty provision at the foot of subsection (1) and substituting the following:

Maximum penalty: \$2 500.;

- (b) by striking out subsection (2).

Amendment of s. 11—Procedure at meetings of the Trust

7. Section 11 of the principal Act is amended by inserting after subsection (4) the following subsections:

(4a) A conference by telephone or other electronic means between members of the Trust will, for the purposes of this section, be taken to be a meeting of the Trust at which the participating members are present if—

- (a) notice of the meeting is given to all members of the Trust in the manner determined by the Trust for the purpose; and
- (b) each participating member is capable of communicating with every other participating member during the conference.

(4b) A proposed resolution of the Trust becomes a valid decision of the Trust despite the fact that it is not voted on at a meeting of the Trust if—

- (a) notice of the proposed resolution is given to all members in accordance with procedures determined by the Trust; and
- (b) a majority of members express concurrence in the proposed resolution by letter or by facsimile transmission or other electronically transmitted written communication setting out the terms of the resolution.

Amendment of s. 13—General functions and powers of the Trust

8. Section 13 of the principal Act is amended—

- (a) by inserting in subsection (1)(a) "in accordance with its strategic and business plans" after "the Reserve";
- (b) by inserting in subsection (1)(a)(i) "of State-wide significance" after "complex";
- (c) by striking out from subsection (2)(a) "subcommittees" and substituting "committees";
- (d) by striking out from subsection (2)(b) "subcommittee" and substituting "committee";
- (e) by inserting in subsection (2)(e) "or over any part of" after "building or facility on";

(f) by striking out subsection (4) and substituting the following subsections:

(4) Despite any other provision of this Act, the Trust must not sell any of the land bounded by bold black lines in the Schedule.

(5) Despite any other provision of this Act (but subject to subsection (7)), the Trust must not—

(a) sell any of its other real property (being real property not within the ambit of subsection (4)); or

(b) grant a lease or licence over the Reserve, or a part of the Reserve, so as to result in a situation where the Trust has, in effect, transferred its responsibility to administer and develop the Reserve in accordance with section 13(1)(a) to another party; or

(c) enter into any partnership, joint venture or other profit sharing arrangement,

unless the Minister has approved a proposal for the transaction and has, at least two months before the proposed transaction is entered into—

(d) given notice of the proposed transaction in the *Gazette* and in a newspaper circulating generally throughout the State; and

(e) provided a written report on the proposed transaction to the Economic and Finance Committee of the Parliament.

(6) Despite any other provision of this Act (but subject to subsection (7)), the Trust must not grant a lease or licence over the Reserve, or a part of the Reserve, for a term exceeding ten years (not being a lease or licence to which subsection (5)(b) applies) without the approval of the Minister.

(7) If the Trust proposes to grant a lease or licence over the Reserve, or a part of the Reserve, for a term exceeding 20 years, the Trust must not do so except in pursuance of an approval granted by a resolution passed by both Houses of Parliament (and subsections (5) and (6) will then not apply with respect to the lease or licence).

(8) Notice of a motion for a resolution under subsection (7) must be given at least 14 sitting days before the motion is passed.

(9) A lease or licence that is subject to the operation of subsection (5), (6) or (7) must be consistent with the Trust's strategic and business plans (as applying at the time that the lease or licence is granted).

Insertion of new Division

9. The following Division is inserted after Division 2 of Part 2 of the principal Act:

DIVISION 2A—PERFORMANCE AND SCOPE OF TRUST'S OPERATIONS

General performance principles

14A. (1) The Trust must perform its commercial operations in accordance with prudent commercial principles and use its best endeavours to achieve a level of return consistent with its functions.

(2) The Trust must perform its non-commercial operations (if any) in an efficient and effective manner consistent with the requirements of its charter.

(3) If the Trust's charter identifies any operations of the Trust as non-commercial operations, the operations are to be regarded as such for the purposes of this section.

Trust's charter

14B. (1) The Minister must prepare a charter for the Trust after consultation with the Trust.

(2) The charter must deal with the following matters:

- (a) the role that the Trust will adopt to ensure that the Reserve is administered and developed for the benefit of the State;
- (b) the nature and scope of the commercial operations to be undertaken, including the nature and scope of any investment activities; and
- (c) the nature and scope of any non-commercial operations to be undertaken and the arrangements for their costing and funding; and
- (d) the nature and scope of any operations to be conducted outside the State; and
- (e) all requirements of the Minister as to—
 - (i) the Trust's obligations to report on its operations;
 - (ii) the form and contents of the Trust's accounts and financial statements;
 - (iii) any accounting, internal auditing or financial systems or practices to be established or observed by the Trust;
 - (iv) the setting of fees or charges and the acquisition or disposal of capital or assets.

(3) The charter may—

- (a) limit the functions or powers of the Trust; and
- (b) deal with any other matter not specifically referred to in subsection (2).

(4) The charter may not extend the functions or powers of the Trust as provided by this or any other Act.

(5) The Minister must, after consultation with the Trust, review the charter before the end of each financial year.

(6) The Minister may, after consultation with the Trust, amend the charter at any time.

(7) The charter or any amendment to the charter comes into force and is binding on the Trust on a day specified in the charter or amendment (but without affecting any contractual obligations previously incurred by the Trust).

Performance agreements

14C. (1) The Minister must, when preparing the charter for the Trust, also prepare, after consultation with the Trust, a performance agreement setting the various performance targets that the Trust is to pursue in the coming financial year or other period specified in the agreement and dealing with such other matters as the Minister considers appropriate.

(2) The Minister must, after consultation with the Trust, review the performance agreement when reviewing the Trust's charter.

(3) The Minister may, after consultation with the Trust, amend the performance agreement at any time.

Business plans

14D. (1) The Trust must prepare—

(a) a long-term strategic plan; and

(b) a business plan.

(2) The business plan must set out or include, in respect of the ensuing year—

(a) strategies to achieve the Trust's performance targets, and a statement of the financial and other resources that will be required to achieve those targets; and

(b) the performance measures that are to be used to monitor and assess performance against the Trust's targets.

(3) A plan must be submitted to the Minister for approval and, when approved, adopted by the Trust.

(4) The Minister may, after consultation with the Trust, require that a plan be amended.

(5) The Trust may review a plan from time to time and must review its business plan before the end of each financial year, or whenever directed to do so by the Minister.

(6) An amendment to a plan does not have effect unless or until approved by the Minister.

Amendment of s. 16—Dealings with money and borrowings

10. Section 16 of the principal Act is amended by inserting after subsection (4) the following subsection:

(5) The Trust must not borrow money without consulting the Minister and obtaining the approval of the Treasurer.

Amendment of s. 18—Power to advance money, to act as guarantor, etc.

11. Section 18 of the principal Act is amended—

(a) by inserting in subsection (1) ", to be undertaken by a third party" after "service or facility on the Reserve";

(b) by inserting after subsection (3) the following subsection:

(4) A proposal of the Trust to lend or advance any money or securities requires the approval of the Treasurer.

Substitution of ss. 20 to 23

12. Sections 20 to 23 of the principal Act are repealed and the following sections are substituted:

Ministerial approvals

20. (1) An approval given by the Minister or the Treasurer under this Act may be—

(a) specific or general; and

(b) conditional or unconditional.

(2) An approval given by the Minister or the Treasurer may be varied or revoked by the Minister or the Treasurer (as the case may be) at any time.

Tax and other liabilities of Trust

21. (1) Except as otherwise determined by the Treasurer, the Trust is liable to all such rates (other than rates that would be payable to a council), duties, taxes and imposts and has all such other liabilities and duties as would apply under the law of the State if the Trust were not an instrumentality of the Crown.

(2) Except as otherwise determined by the Treasurer, the Trust is liable to pay to the Treasurer, for the credit of the Consolidated Account, such amounts as the Treasurer from time to time determines, after consultation with the Minister, to be equivalent to income tax and any other taxes or imposts that the Trust does not pay to the Commonwealth but would be liable to pay under the law of the Commonwealth if it were constituted and organized in such manner as the Treasurer determines to be appropriate for the purposes of this subsection as a public company or group of public companies carrying on the business carried on by the Trust.

(3) Amounts determined by the Treasurer to be payable under subsection (2) must be paid at the times and in the manner determined by the Treasurer after consultation with the Minister.

(4) Except as otherwise determined by the Treasurer after consultation with the Minister, land within the Reserve is exempt from council rates.

(5) Except as otherwise determined by the Treasurer, the Trust, and any prescribed person, is liable to pay to the Treasurer, for the credit of the Consolidated Account, such amounts as the Treasurer from time to time determines, after consultation with the Minister, to be equivalent to rates that would be payable to a council but for the operation of subsection (4).

(6) In this section—

"council" means a council constituted under the *Local Government Act 1999*;

"prescribed person" means a person who would be liable to pay council rates but for the operation of subsection (4).

Dividends

22. (1) The Trust must, before the end of each financial year, recommend by writing to the Treasurer, that the Trust pay a specified dividend, or not pay a dividend, for that financial year, as the Trust considers appropriate.

(2) The Treasurer may, after consultation with the Minister, by notice in writing to the Trust—

- (a) approve a recommendation of the Trust under subsection (1); or
- (b) determine that a dividend specified by the Treasurer be paid, or that no dividend be paid,

as the Treasurer considers appropriate.

(3) The Trust must, if so required by the Treasurer by notice in writing to the Trust at any time during a financial year, recommend by writing to the Treasurer that a specified interim dividend or specified interim dividends be paid by the Trust for that financial year, or that no such dividend or dividends be paid by the Trust, as the Trust considers appropriate.

(4) The Treasurer may, after consultation with the Minister, by notice in writing to the Trust—

- (a) approve a recommendation of the Trust under subsection (3); or
- (b) determine that an interim dividend or interim dividends specified by the Treasurer be paid, or that no interim dividend be paid,

as the Treasurer considers appropriate.

(5) Any determination relating to whether a dividend should be paid under this section and, if so, the amount of any dividend must take into account the nature and scope of any non-commercial operations of the Trust, and any funding requirements or arrangements associated with those operations.

(6) If a dividend or interim dividend or dividends is or are to be paid by the Trust, the dividend or dividends must be paid to the Treasurer in the manner and at the time or times determined by the Treasurer after consultation with the Minister.

(7) If the Treasurer receives an amount from the Trust under this section, the Treasurer may, after consultation with the Minister—

- (a) allocate that amount, or a part of that amount, in a manner determined by the Treasurer; or

- (b) pay that account, or a part of that amount, for the credit of the Consolidated Account.

(8) A recommendation under this section must be made by the Trust itself and may not be made by a person, committee or other body under a delegation.

Register of leases and licences

23. (1) The Trust must keep a register of leases and licences granted by the Trust over any land bounded by bold black lines in the Schedule.

(2) The register must—

- (a) identify the relevant land; and
- (b) set out—
 - (i) the name of the lessee or licensee; and
 - (ii) the term of the lease or licence.

(3) The register must be available for inspection (without charge) by the public at the office of the Trust, or at some other office approved or determined by the Minister, during ordinary office hours.

Damage, etc., to property of the Trust

23A. A person who, without the authority of the Trust—

- (a) damages or destroys any property of the Trust; or
- (b) removes any property of the Trust from the possession or control of the Trust,

is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$210.

Amendment of s. 25—Regulations

13. Section 25 of the principal Act is amended—

- (a) by inserting after paragraph (b) of subsection (2) the following paragraph:
 - (ba) regulate, restrict or prohibit the launching or entry of boats into, or the launching, movement or mooring of boats within, any part of the Reserve covered by water; and;
- (b) by striking out from subsection (2)(e) "\$1 000" and substituting "\$1 250";
- (c) by striking out from subsection (2)(f) "\$75" and substituting "\$160";
- (d) by striking out from subsection (6)(b) "subsection (1)" and substituting "subsection (5)".

Amendment of Schedule 1

14. Schedule 1 of the principal Act is amended by striking out the map and legend set out in that Schedule and substituting the map and legend set out in Schedule 1 of this Act.

Further amendments of principal Act

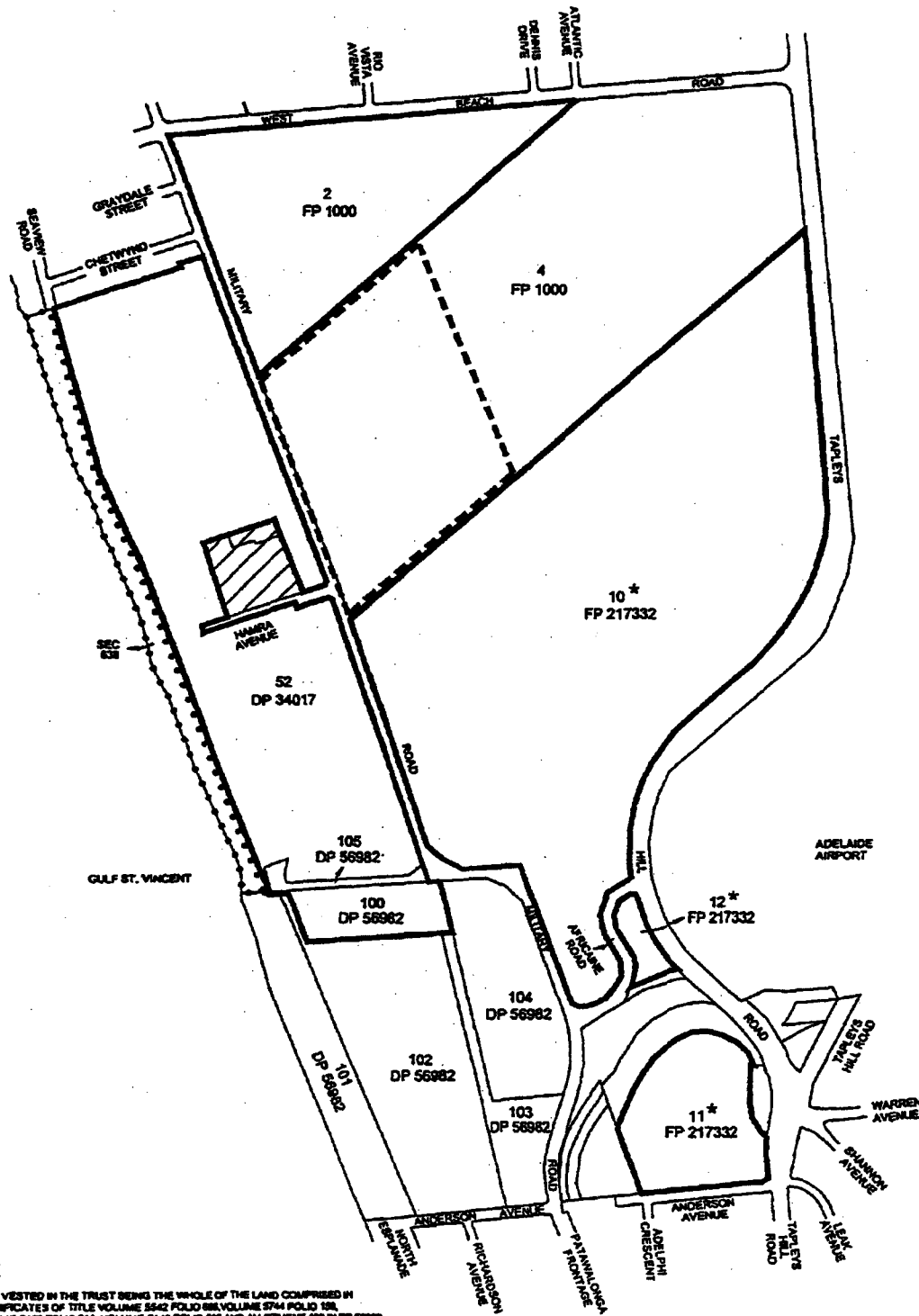
15. The principal Act is further amended as set out in Schedule 2 of this Act.

Transitional provision





16. The members of the West Beach Trust in office immediately before the commencement of this Act will, on that commencement, vacate their respective offices.

SCHEDULE 1

WEST BEACH RECREATION RESERVE



LEGEND

-  LAND VESTED IN THE TRUST BEING THE WHOLE OF THE LAND COMPRISED IN CERTIFICATES OF TITLE VOLUME 5642 FOLIO 688, VOLUME 5744 FOLIO 138, VOLUME 5172 FOLIO 215, VOLUME 5140 FOLIO 685 AND ALLOTMENT 100 IN DP 58982
-  LAND OF WHICH THE TRUST HAS CARE, CONTROL AND MANAGEMENT (SEE SECTION 14), BEING THE WHOLE OF THE LAND COMPRISED IN SECTION 638, HUNDRED OF ADELAIDE, COUNTY OF ADELAIDE (PREP. GAZETTE 22 MAY. 1981, P. 1467)
-  LAND LEASED BY THE TRUST FROM THE COMMONWEALTH OF AUSTRALIA, BEING PORTION OF THE LAND COMPRISED IN ALLOTMENT 4 OF SECTION 224 AND OTHER LAND, HUNDRED OF ADELAIDE AND HOARLUNGA (L.T.R.O FILED PLAN No 1008)
-  LAND RESUMED FROM WEST BEACH TRUST RECREATION RESERVE FOR THE PURPOSE OF ESTABLISHING A MARINE RESEARCH DEVELOPMENT INSTITUTE

DWG No A045401WESTBEACH.DWG

ORIGINAL SHEET SIZE A3

SCHEDULE 2*Further amendments of principal Act*

Long title	Strike out "to repeal the West Beach Recreation Reserve Act 1954;"
Section 2	Strike out this section.
Section 3	Strike out this section.
Section 10(4)	Strike out "Where" and substitute "If".
Section 19(1)	Strike out "the thirtieth day of" and substitute "30". Strike out "thirtieth day of" (second occurring) and substitute "30".
Schedule 1	Strike out "1".
Schedule 2	Strike out this schedule.