

SECRET HARBOUR MANAGEMENT TRUST ACT 1984.

(No. 105 of 1984.)

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SECRET HARBOUR MANAGEMENT TRUST.

No. 105 of 1984.

AN ACT to constitute a management trust to manage and regulate the maintenance, safety and environment of the Breakwaters, the Sand By-pass System, the Outer Harbour, the Inner Harbour and the Foreshore Reserve at Secret Harbour and for incidental and other purposes.

[Assented to 19 December 1984.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Secret Harbour Management Trust Act 1984*. Short title.

Commence-
ment.

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

Interpreta-
tion.

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

“Foreshore Area” means that portion of the Foreshore Reserve transferred to the Crown under the Agreement;

“Management Area” means the Breakwaters, the Outer Harbour, the Inner Harbour and the Sand By-pass System and the Foreshore Area;

“Management Trust” means the Secret Harbour Management Trust constituted under section 5;

“member” means a member of the Management Trust and includes the chairman thereof;

“the Agreement” means the Agreement as defined under the Tourist Development (Secret Harbour) Agreement Act 1983;

“the Company” has the same meaning as that term has in and for the purposes of the Agreement;

“the Council” means the council of the municipality constituted under the Local Government Act 1960 whose district includes the Development Area.

(2) In this Act the terms “Breakwaters”, “Outer Harbour”, “Inner Harbour”, “Sand By-pass System”, “Development Area”, “Foreshore Reserve” and “Residents” have the same meanings as are given to them by the Agreement.

- (d) before 1 July 1995, 4 persons nominated in accordance with subsection (2) and on and after 1 July 1995, 5 persons nominated in accordance with subsection (3).

(2) The persons to be appointed to the Management Trust under subsection (1) (d) before 1 July 1995 shall be nominated by the Company.

(3) The persons to be appointed to the Management Trust under subsection (1) (d) on and after 1 July 1995 shall be as follows—

- (a) 2 shall be persons nominated by the Company;

- (b) 3 shall be persons nominated by the Minister from among persons who are Residents.

(4) Prior to the first occasion on which an appointment is made to the office of member of the Management Trust under subsection (1) (c) or (2) (d) on the nomination of the Council or the Company and on each occasion thereafter the office becomes vacant the Minister shall in writing request the Council or the Company, as the case requires, to submit to him in writing the name of the person it wishes to nominate for appointment as member of the Management Trust and where the Council or the Company, as the case may be, fails to submit the name of a person within 28 days of such request the Minister may nominate for appointment such person as he thinks fit.

Term of
office of
member.

8. (1) The term of office of a member of the Management Trust shall be such period not exceeding 3 years as is specified in the instrument of his appointment.

(2) An office of member becomes vacant if—

- (a) he resigns by notice in writing submitted to the Governor;

- (b) he is absent from 3 consecutive meetings of the Management Trust without leave of the Management Trust;
- (c) his term of office expires by effluxion of time;
- (d) he becomes permanently incapable of performing his duties as member;
- (e) he is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors;
- (f) he is convicted of an indictable offence;
- (g) being a member appointed—
 - (i) under section 7 (1) (d) before 1 July 1995 the constitution of the Trust is varied by virtue of that provision;
 - (ii) under section 7 (1) (b), the Minister withdraws his nomination;
 - (iii) under section 7 (1) (c), the Council withdraws its nomination;
 - (iv) on the nomination of the Company under section 7 (1) (d), the Company withdraws its nomination;

or

- (h) he dies.

(3) A member other than a member referred to in section 7 (1) (a) is not eligible to be re-appointed on expiry of a third successive term of office until 12 months have elapsed after such expiry unless the vacation of office occurs by reason of the operation of subsection (2) (g) (i) or the Minister otherwise approves.

Meetings
of the
Management
Trust.

9. (1) The Chairman shall preside at all meetings of the Management Trust at which he is present.

(2) At any meeting of the Management Trust at which the Chairman is not present the members present shall elect a member to preside at the meeting.

(3) Subject to the by-laws the Management Trust shall hold such meetings as are necessary for the performance of its functions.

(4) Subject to the by-laws, the Chairman may at any time convene a meeting of the Management Trust and shall convene a meeting when requested in writing to do so by any 2 members.

(5) Subject to this Act and the by-laws, the Management Trust may regulate its own procedures in such manner as it thinks fit.

(6) At a meeting of the Management Trust—

(a) 4 members form a quorum;

(b) a question arising at the meeting shall be determined by a majority of the valid votes of the members present.

(7) No act or thing done by the Management Trust is invalidated, prejudiced or affected by reason of any vacancy in the membership of the Management Trust or any failure to appoint any member or any defect in the appointment of any member so long as a quorum of the Management Trust remains.

Remunera-
tion of
members.

10. A member of the Management Trust is entitled to such remuneration and allowances as are determined by the Minister after consulting the Public Service Board.

(2) The Management Trust shall, in carrying out its functions, have regard to—

- (a) the safety and security of persons and property within the Management Area;
- (b) movements of vessels and navigation within the Management Area;
- (c) the appearance and amenity of the Management Area;
- (d) the interests of the Residents; and
- (e) the maintenance of adequate financial resources to enable it to carry out its functions under this Act.

(3) Nothing in this Act shall be construed as taking away or in any way derogating from or diminishing any power otherwise conferred by this or any other Act upon the Management Trust or any other authority or body or person.

Staff.

13. The Management Trust may appoint or engage such persons as are necessary for the purpose of carrying out its functions under this Act.

Funds of the Management Trust.

14. (1) The funds of the Management Trust shall consist of—

- (a) such moneys as are paid to the Management Trust under sections 15 and 17;
- (b) income derived by the Management Trust from all fees, charges, rents and other levies under this Act;
- (c) such moneys as the Management Trust may borrow under and subject to the provisions of this Act;

- (d) advances received from the Capital Fund Account under section 16(1) (b); and
- (e) any other moneys received by the Management Trust under this Act.

(2) Subject to this Act, all moneys referred to in subsection (1) other than moneys referred to in section 15 shall be paid into, and placed to the credit of, an account at a bank approved by the Minister to be called the Secret Harbour Management Trust Account.

(3) Subject to this Act, the funds of the Management Trust shall be applied—

- (a) to meet expenditure incurred in connection with the performance by the Management Trust of its functions under this Act;
- (b) for the repayment of moneys borrowed under section 18;
- (c) in payment of the remuneration and allowances to members; and
- (d) in payment of the salaries and wages of persons employed or engaged by the Management Trust.

(4) Moneys standing to the credit of the Secret Harbour Management Trust Account shall be applied only for the purposes of this Act but the Management Trust may invest any funds not immediately required for those purposes in any investment authorized under section 16 of the Trustees Act 1962.

15. (1) The payments provided for under clause 15 of the Agreement shall be received by the Management Trust and shall be paid into an account to be known as the Secret Harbour Capital Fund Account (hereinafter referred to as the "Capital Fund Account") maintained at a bank approved by the Minister.

Capital Fund
and Capital
Fund
Finance
Committees.

(2) There shall be a committee to be known as the Capital Fund Finance Committee (hereinafter referred to as "the Committee").

(3) The Committee shall consist of 3 members appointed by the Minister of whom—

- (a) 1 shall be a person who is a member of the Management Trust and who has financial and investment expertise;
- (b) 1 shall be a person nominated for appointment by the Company;
- (c) 1 shall be a person having financial and investment expertise nominated by the Minister and the Company but where the Minister and the Company fail to agree on a nomination, the Minister may make the nomination without the Company.

(4) The Committee may function notwithstanding any vacancy on it.

(5) Prior to the first occasion on which an appointment is made to the office of the member of the Committee appointed on the nomination of the Company and on each occasion thereafter when the office becomes vacant, the Minister shall in writing request the Company to submit to him in writing the name of the person it wishes to nominate for appointment as member of the Committee and where the Company fails to submit the name of a person within 28 days of such request the Minister may appoint as member of the Committee such person as he thinks fit.

(6) A member of the Committee may be removed from office by the Minister at any time.

(7) 2 members of the Committee constitute a quorum.

(8) To the extent that they are not prescribed the Committee may regulate its own procedures.

16. (1) Moneys paid into the Capital Fund Account and any income derived therefrom shall be applied on the recommendation of the Capital Fund Finance Committee—

Application
of Capital
Fund
Account.

- (a) for the purposes of major maintenance of or reconstruction of the walls of the Inner Harbour, the Management Area and the Outer Harbour, the Breakwaters, the Sand By-pass System and associated dredging and navigational aids within the Management Area; and
- (b) with the approval of the Minister and the Company for other purposes connected with the Development Area and for making advances to the Management Trust Account referred to in section 14 (2).

(2) The Capital Fund Finance Committee may invest any moneys in the Capital Fund Account that are not immediately required for the purposes referred to in subsection (1) in—

- (a) any investment authorized by the Trustees Act 1962;
- (b) income producing real property; and
- (c) such other investment as the Minister may approve from time to time.

(3) The Capital Fund Finance Committee shall not apply any moneys in the Capital Fund Account for any of the purposes referred to in subsection (1) (b) unless the moneys otherwise available to the Management Trust are not sufficient for that purpose.

Levies, fees
and charges.

17. (1) Subject to this section, the Management Trust may by by-laws impose an annual maintenance charge on land within the Development Area and such levies, fees and charges in respect of such matters as are specified in the by-laws.

(2) A levy, fee or charge imposed under subsection (1) may be expressed as a fixed amount or, if it is imposed with respect to land, may be expressed as a percentage of the value of the land to which it applies and in this context "value" means the valuation of the land as recorded in the rate book compiled by the Council under the Local Government Act 1960.

(3) Any moneys paid or liable to be paid to the Management Trust are in addition and not in lieu of any other charges payable under this or any other Act.

(4) Any moneys due to the Management Trust in respect of any levy, fee or charge imposed under the by-laws on the owner of any land in the Development Area if unpaid—

- (a) constitute a debt due to the Management Trust from the owner of the land;
- (b) are recoverable from the owner in any court of competent jurisdiction; and
- (c) constitute a charge on the land having priority over every security or claim against the land other than any charge on the land by virtue of any other Act.

(5) The annual maintenance charge referred to in subsection (1) shall not apply to vacant land in the Development Area registered in the name of the Company and held by the Company as trustee for the Secret Harbour Unit Trust referred to in clause 17 (3) of the Agreement.

- (b) income and expenditure statement; and
- (c) such other statements as the Treasurer may from time to time direct,

in such forms as the Treasurer approves and submit these statements to the Auditor General for audit.

Audit.

23. (1) The Auditor General shall inspect and audit the accounts and records of the financial transactions of the Management Trust and records relating to assets of, or in the custody of, the Management Trust, and shall forthwith draw to the attention of the Minister any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor General, of sufficient importance to justify his so doing.

(2) The Auditor General shall examine the financial statements submitted to him for audit and shall report to the Minister—

- (a) whether in his opinion the statements are based on proper accounts and records;
- (b) whether in his opinion the statements are properly drawn up in accordance with applicable generally accepted accounting standards so as to present fairly—
 - (i) the financial transactions for the period under review; and
 - (ii) the financial position at the end of that period;
- (c) whether in his opinion the controls exercised by the Management Trust are sufficiently adequate to provide reasonable assurance that the receipt, expenditure and investment of moneys and the acquisition and disposal of assets have been in accordance with this Act; and

- (d) such other matters arising out of the statements as the Auditor General considers should be reported.

(3) The Auditor General has for the purposes of this Act all of the powers conferred on him by the Audit Act 1904.

24. (1) The Management Trust may impose charges and fees in respect of any service or facility provided by the Management Trust.

Fees and charges.

(2) Any fees or charges imposed by the Management Trust pursuant to subsection (1) in respect of any service or facility shall have regard to the cost of the provision of the service or facility, as the case requires.

25. The Management Trust may accept any gift or donation made to it.

Management Trust may accept gifts.

26. The Company shall not charge, otherwise than to the Management Trust, any dredge or other apparatus for the purpose of dredging and notwithstanding any other Act or law, any dredge or other apparatus provided by the Company pursuant to the provisions of the Agreement shall not be seized in respect of any moneys owing by the Company to any other person and any writ or warrant of execution or other process issued in respect of any such dredge or apparatus is of no effect.

Protection of dredge and apparatus from execution.

27. (1) Subject to subsection (2), the Inner Harbour is open to navigation on and from the day appointed by the Minister, as he is hereby empowered to do, by notice published in the *Government Gazette* but subject to any other Act and any by-laws made under this Act with respect to navigation.

Inner Harbour open to navigation.

(2) The Trust may, with the prior approval of the Minister charged with the administration of the Land Act given under clause 1 (2) (q) of the Special Lease in The Second Schedule of the Tourist Development (Secret Harbour) Agreement Act 1983, prohibit or restrict access to the surface waters of the Boat Harbour.

Purchaser
to hold land
subject
to this Act.

28. Every purchaser of land in the Development Area shall hold the land subject to this Act and the Registrar of Titles shall cause every certificate of title issued under the Transfer of Land Act 1893 containing land in the Development Area to be endorsed with a statement to that effect.

Interpre-
tation.

29. In this section and in sections 30 and 31—

“alleged offender” means a person to whom an infringement notice has been given pursuant to section 30;

“authorized person” means person authorized under section 31 to give infringement notices;

“infringement notice” means notice given under section 30.

Infringement
notice.

30. (1) Where an authorized person has reason to believe that a person has committed any such offence against the by-laws as is prescribed for the purposes of sections 29 to 31 the authorized person may, at or about the time the offence is believed to have been committed, personally give to that person a notice in the prescribed form informing the person that, if he does not wish to have a complaint of the alleged offence heard and determined by a court, he may pay to a person specified in the notice, within the time therein specified, the amount of the penalty prescribed for the offence, if dealt with under sections 29 to 31.

(2) A person given an infringement notice may decline to be dealt with under sections 29 to 31 and, if the prescribed penalty is not paid within the time specified in the notice or within such further time as may, in any particular case, be allowed, he is deemed to have declined to be dealt with under sections 29 to 31.

(3) An infringement notice may, whether or not the prescribed penalty has been paid, be withdrawn, at any time within 28 days after the giving of the notice, by the sending of a notice, in the prescribed form, signed by a prescribed person, to the alleged offender advising the alleged offender that the infringement notice has been withdrawn, and, in that event, the amount of any prescribed penalty that has been paid shall be refunded.

(4) Where a prescribed penalty has been paid pursuant to an infringement notice and the notice has not been withdrawn as provided by subsection (3) proceedings shall not be brought against any person with respect to the offence alleged in the notice.

31. (1) An employee of the Management Trust may be authorized in writing signed by the chairman of the Management Trust to give infringement notices. Authorized persons.

(2) The Management Trust shall issue to each authorized person a certificate in the prescribed form which he shall produce whenever required to do so by a person to whom he has given, or is about to give, an infringement notice.

32. The Management Trust shall prepare an annual report of its proceedings and operations during the preceding year, which report, together with copies of the financial statements as audited by the Auditor General and his report thereon.

shall be laid by the Minister before each of the Houses of Parliament as soon as practical in each year after receipt of the report of the Auditor General.

By-laws.

33. (1) Subject to subsection (3), the Management Trust may, with the approval of the Minister, make such by-laws as it thinks are necessary or convenient for the purposes of this Act and without limiting the generality of the foregoing may make by-laws—

- (a) providing for the control and management of waterways in the Management Area;
- (b) providing for the control and regulation of vehicles and vessels within the Management Area;
- (c) providing for the protection of the Breakwaters and Sand By-pass system and structures vested in the Management Trust;
- (d) providing for the safety of persons and vessels in the waterways within the Management Area;
- (e) providing for the prevention of pollution in the Management Area;
- (f) providing for the control of any recreational activity in any portion of the Management Area;
- (g) providing for the regulation and control of parking of vehicles and mooring of vessels in the Management Area;
- (h) with respect to the control, construction, maintenance and use of jetties;
- (i) regulating the meetings of the Management Trust;

