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25 Jun, 2002 15:25:56 Midland



LODGED BY  
**CROWN TITLE CREATION**

ADDRESS

PHONE No.

FAX No.

REFERENCE No.

ISSUING BOX No.

PREPARED BY

ADDRESS

PHONE No.

FAX No.

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

- 1. \_\_\_\_\_ Received Items
- 2. \_\_\_\_\_ Nos.
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_ Receiving Clerk
- 6. \_\_\_\_\_

Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register.

CLT	30.37/613
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*Letter to Lessee Sent.*

EXAMINED



ORIGINAL

Application G747753

WESTERN



AUSTRALIA

298 / 1996

**SPECIAL LEASE**

REGISTRATION FEE PAID

CROWN LEASE 298/1996

LEASE NO. 3116/11704

FREMANTLE LOT 2008

ELIZABETH THE SECOND by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth. To all to whom these presents shall come,

GREETING: Know ye that:

WHEREAS:

- A. By the Land Act, 1933 power is given to the Governor in Council of our State of Western Australia to grant leases of any portion of land to any person for any special purpose upon the terms and conditions set forth in Section 116 of the said Act.
- B. The Lessee has established a Yacht Harbour comprising harbour and marina and associated facilities upon and within the land described and delineated in the first schedule in the manner delineated on the plan hereunto annexed as the fourth schedule.
- C. The Lessee has made application for a lease of that portion of the land hereinafter described and delineated in Part A of the first schedule hereto under Section 116 (14) of the Land Act, 1933 for the special purposes of a Yacht Harbour.
- D. The Lessee has made further application for a lease (hereinafter "the Section 117 lease") of that portion of the land hereinafter described and delineated in Part B of the first schedule hereto (hereinafter "the Section 117 land") under Section 117 of the Land Act 1933 for the same special purpose.
- E. Notice of the application in respect of the land referred to in Recital C and of the purpose and term of the proposed lease thereof has been published in the manner prescribed by Section 116 and the Governor in Council has by notice in the Government Gazette approved the special purpose and has approved the granting of the said lease.
- F. Our Minister for Lands has in pursuance of Section 136 of the Land Act 1933 (to the extent to which that section applies to this lease) allowed directed and approved the granting of this lease.

We of our especial Grace, and in consideration of the premises, and also in consideration of the rents hereinafter reserved and on the part of the Lessee to be paid and in the exercise of the powers in that behalf to Us given by the said Act, do by these presents demise and lease to the Lessee ALL THAT piece or parcel of land described and delineated in Part A of the first schedule hereto with the appurtenances (hereinafter referred to as "the demised premises") TO HAVE AND TO HOLD the demised premises SUBJECT TO the powers reservations covenants and conditions herein and in the said Act contained and with all the rights powers and privileges

conferred by the said Act as are applicable hereto unto the Lessee for the term of forty nine (49) years to be computed from the 28th February, 1996 (but determinable as hereinafter provided) for the special purpose aforesaid YIELDING AND PAYING therefor during the said term unto Us, Our heirs and successors the yearly rent of ONE THOUSAND DOLLARS (\$1,000.00) without deduction payable to Our Minister for Lands of our said State AND SUBJECT TO re-appraisal of the rent as provided in clause 2 (1) hereof PROVIDED NEVERTHELESS that it shall at all times be lawful for Us, Our heirs and successors or for any person or persons acting in that behalf by Our or their authority to resume and enter upon possession of any part of the demised premises which it may at any time by Us, Our heirs and successors, be deemed necessary to resume for roads, tramways, railways, railway stations, bridges, canals, towing paths, harbour or river improvement works, drainage or irrigation works, quarries, and generally for any other works or purposes of public use, utility or convenience, and for the purposes of exercising the power to search for minerals and gems hereinafter reserved, and such land so resumed to hold to Us, Our heirs and successors, as of Our or Their former estate, without making to the said Lessee, or any person claiming under the Lessee any compensation in respect thereof, so nevertheless that the lands so to be resumed shall not exceed one-twentieth part in the whole of the demised premises aforesaid, and that no such resumption be made of any part of the demised premises upon which any buildings may have been erected, or which may be enclosed and in use as gardens, or otherwise for the more convenient occupation of any such buildings or on which any other improvements as defined by the said Act have been made without compensation; PROVIDED ALSO that it shall be lawful at all times for Us, Our heirs and successors, or for any person or persons acting in that behalf by Our or Their Authority to cut and take away any such indigenous timber, and to search and dig for and carry away any stones or other materials which may be required for making or keeping in repair any roads, tramways, railways, railway stations, bridges, canals, towing paths, harbour works, break-waters, river improvements, drainage or irrigation works and generally for any other works or purposes of public use, utility, or convenience, without making to the Lessee, or any person claiming under the Lessee any compensation in respect thereof; and we do hereby save and reserve to Us, Our heirs and successors, all mines of gold, silver, copper tin or other metals, ore and mineral, or other substances containing metals, and all gems and precious stones, and coal or mineral oil, and all phosphatic substances in and under the demised premises, with full liberty at all times to search and dig for and carry away the same; and for that purpose enter upon the demised premises or any part thereof PROVIDED FURTHER that all petroleum on or below the surface of the demised premises is reserved to Her Majesty with the right to Her Majesty or any person claiming under her or lawfully authorised in that behalf to have access to the demised premises for the purpose of searching for and for the operation or obtaining petroleum in any part of the land under the provisions of the Petroleum Act, 1967.



1. THE Lessee HEREBY COVENANTS AND AGREES with Us, Our Heirs and successors and with the Minister for Lands as follows :-

- (1) The Lessee will pay the reserved rent in manner aforesaid.
- (2) Further development and construction shall be carried out and completed to the satisfaction in all things of the Minister for Lands the Minister for Works and the Minister for Transport and the local authority having jurisdiction over the demised premises and the Section 117 land in accordance with the plan hereunto annexed as the fourth schedule and all enlarged drawings plans elevations sections specifications and quantities relating and/or incidental thereto as are firstly approved by the said Ministers and the said local authority as hereinafter provided and the Lessee will not make any departure therefrom without the prior consent in writing of the said Ministers and the said local authority.
- (3) In subsequent development and construction and in the equipping of the Yacht Harbour the Lessee will -
  - (a) use and install only good quality materials;
  - (b) comply with all statutory requirements rules regulations and by-laws relating to the work;
  - (c) consult fully with the said Ministers and all other government instrumentalities and departments and the said local authority and their respective officers in regard to the development and construction and make available to the said Ministers or as directed by them or any or of them all plans specifications surveys diagram records researches reports investigations studies and the results thereof or connected therewith;
  - (d) retain and employ all necessary architects surveyors engineers experts and consultants and ensure that at all times they consult fully with the said Ministers all government instrumentalities and departments the local authority aforesaid and their respective officers;
  - (e) permit any officer or agent of any Minister of the Crown or any government instrumentality or department or the said local authority duly authorised in writing to enter upon the demised premises and the Section 117 land to inspect the same and the development and construction and for any other reasonable purpose and to afford such officers and agents such facilities as they may reasonably require;
  - (f) pay and bear all costs and expenses of or incidental to the carrying out of the works including all fees payable to any architects surveyors engineers experts and consultants appointed by any Minister of the Crown in relation to the work and indemnify the said Ministers against all such costs expenses and fees.

## (4) The Lessee shall -

- (a) duly and punctually pay and discharge all present and future rates taxes charges assessments impositions and out-goings whatsoever which now are or during the term hereby created shall be payable in respect of or charged upon the demised premises and the Section 117 land or imposed upon the owner occupier or tenant in respect thereof;
- (b) from time to time and at all times during the term hereof at its own cost operate and maintain the Yacht Harbour in a proper and efficient manner and comply with accepted modern practices in regard thereto and keep and maintain the demised premises and the Section 117 land and all development reclamation buildings structures erections fixtures plant equipment and all improvements whatsoever now or hereafter deposited or erected thereon or affixed thereto or connected therewith in good repair and in proper working order and condition fair wear and tear excepted to the satisfaction of the Minister for Lands and the Lessee will yield up the demised premises to the Minister for Lands at the expiration or sooner determination of this lease in good and substantial repair order and condition fair wear and tear excepted and (where applicable) in proper working order and condition and the Lessee agrees that on the expiration of the term hereby created or on the prior termination of such term all buildings structures erections or improvements whatsoever then erected on or affixed to the demised premises or which form part of the Yacht Harbour shall become and remain the absolute property of the Minister for Lands without compensation to the Lessee and the Lessee shall not have any tenants rights thereto or therein;
- (c) duly and punctually perform observe comply with carry out and conform with the provisions of all statutes for the time being in force and of all rules regulations and by-laws made thereunder and for the time being in force;
- (d) not do or leave undone or cause or permit or suffer to be done or left undone in or upon the demised premises and the Section 117 land or any part thereof any act or thing which may be or become a nuisance damage annoyance or inconvenience to the Minister for Lands or to the occupiers of any of the adjoining of neighbouring premises land and to use the demised premises and the Section 117 land only for the purposes of the Yacht Harbour;
- (e) perform discharge and execute all requisitions and works and do and perform all such acts and things upon unto in respect of or affecting the demised premises and the Section 117 land or any part thereof or the operations carried out therein as are or may be required or directed to be executed or done (whether by the Minister for Lands or tenant owner or occupier) by the Council of any

municipality and by any other local or public authority or by order or in pursuance of any statute (State or Federal) now or hereafter in force or by order or in pursuance of any by-law or regulation under any such statute;

- (f) not do or leave undone or suffer to be done or left unpaid any act matter or thing whereby a nuisance or anything in the nature of or which may be deemed to be a nuisance by any local or public authority body or person or within the meaning of any statute (State or Federal) now or hereafter in force or any regulations or by-laws made thereunder may exist arise or continue upon or in connection with the demised premises and the Section 117 land or any business or activity carried on upon the same or the use or occupancy thereof AND to forthwith abate any such nuisance or alleged nuisance and carry out and comply with all the provisions of every such statute or by-law and of every requisition and order of any local or other public authority in reference thereto;
- (g) pay to the Minister for Lands or as directed by it on demand all sums of money which the said Minister may at any time and from time to time hereafter pay or expand or be called upon to repay in or about or in connection with performing discharging or executing any requisition or works abating any nuisance or alleged nuisance referred to in the immediately proceeding paragraphs (e) and (f) and which contrary to the agreements therein contained the Lessee neglects or fails to perform discharge or execute;
- (h) not without the previous consent in writing of the Minister for Lands the Minister for Works and the Minister for Transport first had and obtained dredge or reclaim any part of the water area over the demised premises or build on affix to or install on or permit or suffer to be built on affixed to or installed on the demised premises or the Section 117 land any building structure erection fixture plant equipment or improvement whatsoever (either above or below the surface of the demised premises or the Section 117 land ) and with each application for the consent therefor submit to the said Ministers plans and specifications of the proposed dredging or reclamation works buildings structure erection fixture plant equipment or improvement and to make complete and carry out the same strictly in accordance with plans and specifications approved by the said Ministers and the local authority having jurisdiction over the demised premises and the Section 117 land or either (as the case requires) AND the provisions of Clause 1 (4) shall apply mutatis mutandis to all works undertaken by the Lessee pursuant to this paragraph (h);
- (i) permit any Minister of the Crown by agents servants and workmen with or without appliances and equipment at all times to enter into and upon the demised



premises and the Section 117 land to inspect the demised premises and the Section 117 land for the purpose of ensuring that the Lessee is observing performing and complying with the covenants conditions and obligations of this lease and the Section 117 lease and the Lessee shall forthwith execute all the works (including maintenance and the removal of any obstructions) required to be done by written notice by any such Minister PROVIDED THAT if the Lessee shall not within one month after service of such notice commence and diligently proceed with the execution of those works mentioned in such notice (including where necessary and with the prior consent of any such Minister the undertaking by and at the expense in all things of the Lessee of any preliminary research investigations and studies relating to such work) it shall be lawful for the said Minister by its contractors servants workmen and agents to enter upon the demised premises and the Section 117 land or either (as the case requires) and execute such works and the cost thereof shall be debt from the Lessee and be forthwith recoverable by action;

- (j) permit the Metropolitan Water Authority by its officers workmen servants agents contractors and others acting under the authority of the said Authority with or without vehicles or motor or other mechanised vehicle laden or unladen from time to time and at all times during the said term to enter on the demised premises and the Section 117 land or either (as the case requires) for the purposes of inspecting cleansing repairing maintaining and renewing the drain and the apparatus connected therewith constructed beneath the surface of that portion of the demised premises and the Section 117 land delineated and shown coloured green on the plan hereunto annexed as the fifth schedule (hereinafter referred to as "the Board's drain");
- (k) not to construct or cause permit or suffer the construction of any building foundation or structure or any part thereof within 2.7 metres of the centreline of the Board's drain and not to do cause suffer or permit any act matter or thing which will obstruct or is likely to obstruct the flow of water through the Board's drain;
- (l) keep and maintain by all proper means the waters of an the air space above the Yacht Harbour and the approach channel free and clear of all obstructions which are or may be prejudicial to or endanger or impede the navigation of such waters and in particular without limiting the generality of the foregoing the Lessee will dredge or cause to be dredged -
  - (i) the approach channel to the yacht harbour (but not any channel from the open sea to the Fishing Boat Harbour and or Challenge Harbour) to a

- minimum depth of 4 metres below Low Water Mark Fremantle; in conjunction with any other users of the approach channel; and
- (ii) the Yacht Harbour to such depth or depths as shall from time to time after consultation between the Lessee and the Department of Transport be approved by that Department;
- (m) at its own cost and expense arrange for the maintenance of all electric power and lighting telephone water drainage and sewerage and other services to on and from the demised premises and the Section 117 land;
- (n) as between the lessor and the lessee accept sole responsibility for the disposal of all gross garbage refuse waste substances or material of whatsoever kind from the works or operations on the demised premises and the Section 117 land;
- (o) comply forthwith with any requirement in connection with the protection of the environment arising out of or incidental to the operations of the Lessee hereunder or under the Section 117 lease that may be made by the Crown or by any Crown agency or instrumentality or any local or other authority or statutory body pursuant to any Act from time to time in force and in particular and without derogating from the foregoing provisions of this sub clause permit inspectors appointed under Section 66 of the Environmental Protection Act 1971 and other officers of the Environmental Protection Authority at all reasonable times to have access to the demised premises and the Section 117 land or either as the case requires for the purpose of monitoring the quality of the waters and the biota of the Yacht Harbour and the approach channel;
- (p) provide install maintain and operate navigational aids relative to the development construction and operation of the Yacht Harbour and in accordance with the requirements and to the satisfaction of the Minister for Transport;
- (q) at all times during the term hereof ensure that -
- (i) access to and egress from the demised premises and the Section 117 land by members officers servants workmen agents contractors subcontractors licensees invitees customers and visitors of the Lessee and other acting under the authority of the Lessee with or without vehicles or motor or other mechanised vehicles laden or unladen shall primarily be by means of the Scott Street railway crossing and marked A-B-C-D on the plan hereunto annexed as the fourth schedule;
- (ii) free public pedestrian access to the southern breakwater forming part of the Yacht Harbour is permitted PROVIDED THAT with the prior approval of the Minister for Lands such access may be prohibited or restricted for any reasonable purpose and period;



- (iii) no public vehicular access to either breakwater is permitted;
- (r) pay all fees and charges payable to any architect surveyor engineer expert or consultant employed or retained by or on behalf of any Minister of the Crown in respect of services performed or work done relating to the approval of plans or drawings or otherwise in connection with the carrying out of the obligations of the Lessee hereunder and under the Section 117 lease;
- (s) insure and keep insured the erections and buildings on the demised premises and the Section 117 land against loss or damage by fire earthquake storm and tempest and such other risks as the Minister for Lands may from time to time reasonably require including but not limited to damage to or destruction of the plate glass in the windows screens mirrors doors advertisements and other parts of such erections and buildings to the full insurable value thereof with a reputable and substantial insurance office and pay the premiums necessary for the above purposes on or before the days on which the same shall respectively become due and whenever so required produce to the Minister for Lands or its agents the policy or several policies of such insurance and the receipts for the current year's premiums AND cause all moneys received by virtue of such insurance to be forthwith laid out in repairing rebuilding or reinstating the demised premises and the Section 117 land so damaged or destroyed and make up any deficiency out of the Lessee's own moneys PROVIDED ALWAYS that if the Lessee shall fail to make and maintain any such insurance as aforesaid the Minister for Lands may from time to time at its discretion effect and keep on foot such insurance and the Lessee will on demand repay to the said Minister all sums of money expended by it for that purpose;
- (t) not do or permit or suffer to be done in about or upon the demised premises and the Section 117 land any act or thing whereby any policy insurance against loss or damage to the demised premises and the Section 117 land or any part thereof may become void or voidable;
- (u) indemnify and keep indemnified all Ministers of the Crown and the Crown and all instrumentalities thereof and all officers servants workmen agents and contractors of such Ministers the Crown and its instrumentalities and the employees of such agents and contractors from and against all actions claims costs proceedings suits and demands whatsoever (whether arising founded on or based in contract tort or statute or otherwise howsoever or any combination thereof) which may at any time be brought maintained or made against all or anyone or more of them:

- (i) in respect of any loss (including loss of use) injury or damage of or to any nature or kind of property; and
- (ii) in respect of any death or injury sustained by any person including without limiting the generality of the foregoing an officer servant workman agent or contractor of the said Ministers or an employee of such agent or contractors

directly or indirectly during the term thereof or any extension thereof caused by arising out of or in connection with:

- (1) the use or occupation of the demised premises and the Section 117 land by the Lessee, or
  - (2) any work carried out by or on behalf of the Lessee pursuant to this lease or the Section 117 lease, or
  - (3) the Lessee's activities and operations business or otherwise whatsoever under this lease and the Section 117 lease, or
  - (4) the construction maintenance or use by the Lessee or its members officers servants workmen agents contractors subcontractors licensees invitees customers visitors or any other person or persons whatsoever of the works facilities or services the subject of this lease and the Section 117 lease or the plant apparatus or equipment installed in connection therewith, or
  - (5) the pollution by and/or with oil or any other liquid garbage material refuse substance waste matter or thing of any class kind or description whatsoever of the waters of the Yacht Harbour and adjacent thereto and of the air generally above the same, or
  - (6) any incorrect information or data or plans given or made available by the Lessee or on its behalf to the said Ministers or the Crown or any instrumentality thereof, or
  - (7) any default by the Lessee in the due and punctual performance observance and compliance with any of its other covenants agreements conditions or obligations herein contained;
- (v) insure in an amount of not less than TWO MILLION DOLLARS (\$2,000,000) or such greater amount as the Minister for Lands at any time and from time to time after notice to the Lessee may require in an insurance office approved by the said Minister in respect of all indemnities referred to in the immediately preceding paragraph (u) and produce or cause to be produced to the said Minister the relevant policy or policies of insurance and premium receipts

therefor AND if the Lessee fails to pay any premiums in respect of any such policy the said Minister may pay the same and any amount so paid by the said Minister shall be payable by the Lessee to the said Minister on demand;

- (w) at all times during the term hereof observe perform and comply with all the terms covenants agreements conditions and obligations on the part of the Lessee contained or implied in the Section 117 lease;
  - (x) yield up the demised premises at the expiration or sooner determination of this lease in accordance with the covenants and agreements herein contained.
- (5) Except as hereinafter in this subclause provided the Lessee will not without the prior written consent of the Minister for Lands assign mortgage charge sublet dispose of part with the possession of or grant any licence in respect of the demised premises and the Section 117 land or any part thereof or procure allow or suffer either voluntarily or involuntarily the same to be assigned mortgaged charged sublet disposed of the possession thereof parted with or licenced for all or any part of the term hereby created PROVIDED THAT until the said Minister shall otherwise direct consent shall not be required for any licence granted by the Lessee either gratuitously or for reward in respect of any portion of the demised premises or the Section 117 land for any period not exceeding two (2) days (hereinafter "a short term licence") and any sublease or assignment of a sublease of a pen within the Section 117 land PROVIDED HOWEVER that where consent is required the said Minister may condition its consent upon the execution of an agreement to be prepared by or on behalf of the said Minister and executed by the proposed assignee mortgagee chargee sublessee or licensee binding such assignee mortgagee chargee sublessee or licensee to observe and comply with the covenants conditions and stipulations herein contained and such further covenants and conditions as the said Minister shall deem fit PROVIDED FURTHER THAT notwithstanding anything contained in or anything done under or pursuant to the preceding provisions of this subclause the Lessee shall at all times during the currency of this lease and the Section 117 lease be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part herein contained or implied AND the provisions of Section 80 and 82 of the Property Law Act 1969 are hereby expressly excluded from this lease.
- (6) Notwithstanding the prior written consent of the Minister for Lands pursuant to the immediately preceding subclause (5) or that under that subclause consent to any short term license may not be required for the time being the Lessee will whenever requested by the said Minister -
- (a) give to the said Minister such particulars in writing as the said Minister may reasonably require of all assignments sublettings and licences (including short



term licences) granted in respect of the demised premises and the Section 117 land or any part thereof;

- (b) make available to the said Minister or a person appointed in writing by the said Minister all documents and records which relate to or are connected with any such assignment subletting or licence and permit the said Minister or person so appointed to examine and take copies or extracts from them.

- (7) The Lessee will on demand pay to the Minister for Lands all costs of and incidental to the preparation execution stamping and registration of this lease and the Section 117 lease each in duplicate.

2. \_\_\_ PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED by and between Us, Our heirs and successors the Minister for Lands and the Lessee as follows:

- (1) The Lessee has pursuant to clause 1(2) (and in accordance with its covenants under clause 1 (3) and (4)) completed the development of and construction on the demised premises and the Section 117 land of those facilities of the Yacht Harbour comprising the works buildings and improvements described in the Sixth Schedule and those facilities are available for use by third parties as provided in clause 1 (2).

- (2) (a) The Minister for Lands shall be at liberty to reappraise the yearly rent payable hereunder and under the Section 117 lease for -

- (i) each of the periods of three years commencing on the 1st day of January 1998.

in accordance with the said Minister's valuation (excluding therefrom the value of any building structure erection fixture plant equipment or improvement whatsoever constructed on or affixed to the demised premises and the Section 117 land at the cost and expense of the Lessee AND having regard to the Lessee's costs and expenses in creating by reclamation the Section 117 land).

PROVIDED THAT such rent -

- (i) shall not in any event be less than ONE THOUSAND DOLLARS (\$1,000) per year;

- (b) Upon re-appraisal of the rent pursuant to paragraph (a) of this sub-clause the said Minister shall give written notice of the amount thereof to the Lessee and (subject to the provisions of paragraph (c) of this sub-clause) that re-appraised rent shall be payable in respect of the demised premises for the period of three years set out in the notice or the remainder of the said term (as the case requires) in the manner hereinbefore provided and thereupon in all other respects the demised premises and the Section 117 land shall continue to be held by the

Lessee on the same terms covenants and conditions herein and in the Section 117 lease contained.

- (c) Within one month of the receipt of the notice referred to in paragraph (b) of this sub-clause the Lessee may by notice addressed to the said Minister object to the re-appraised rental so notified and request a reference to arbitration for a determination of the rental in which event the question of determining such rental shall be referred to and settled by arbitration under the provisions of the Arbitration Act 1895 and the rental determined upon arbitration shall be payable by the Lessee for the first mentioned period of three years or each succeeding period of three years or the remainder of the said term (as the case may be) unless again reappraised and a fresh determination be subsequently made in accordance with the provisions of this sub-clause.
  - (d) Notwithstanding the service by the Lessee of a notice under paragraph (c) of this subclause the Lessee shall pay to the said Minister the re-appraised rental from the date such re-appraised rental becomes payable under paragraph (b) of this subclause without any deduction or abatement until the date of the determination upon arbitration whereupon the said Minister shall refund the amount of any rent which according to such determination has been overpaid or the Lessee shall pay to the said Minister the amount of any rent which according to such determination has been underpaid (as the case may be).
  - (e) Where the rental determined upon arbitration is the same as or greater than the rental notified by the notice as aforesaid all costs of the said arbitration shall be borne by the Lessee but where the rental determined upon arbitration is less than the rental notified by the notice as aforesaid all costs of the arbitration shall be borne by the said Minister.
- (3) All rights other than those expressly or impliedly granted under this lease are reserved to Us, Our heirs and successors and the Minister for Lands (as the case requires).
- (4) If -
- (a) the rent hereby reserved is unpaid for sixty days after becoming payable (whether formally demanded or not) and such default continues for a period of a further twenty eight days after notice by the Minister for Lands to the Lessee specifying the non-payment complained of; or
  - (b) if a petition is lodged or a resolution is passed for winding up or dissolution of the Lessee or if a receiver or a receiver and manager of the affairs and undertaking of the Lessee or any part hereof is appointed; or
  - (c) the Lessee suffers any process of execution to be levied on its property and to remain unsatisfied for seven days; or

- (d) the Lessee fails or ceases to use the demised premises and the Section 117 land for the special purpose of a Yacht Harbour; or
- (e) if the Section 117 lease expires or is determined under the provisions therein contained, or
- (f) the Lessee defaults in the due and punctual performance or observance of any covenant on its part herein contained or implied and fails to remedy that default within a reasonable time after the service on the Lessee of a notice specifying such default

THEN and in any of the said cases it shall be lawful for Us, Our heirs and successors into and upon the demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess and enjoy as if this lease had never been executed without making any compensation to the Lessee but without prejudice to any right of action of both or either of Us, Our heirs and successors and the Minister for Lands in respect of any breach of the Lessee's covenants herein contained provided however that on a termination of this lease whether by efflux of time or otherwise the lessee shall be entitled to remove all improvements made in or on the Section 117 land by the lessee within three calendar months immediately following the expiry or determination of the lease.

- (5) Any notice consent request or other writing authorised or required by this lease to be given or sent shall be deemed to have been duly given or sent by the Minister for Lands or the Minister for Works or the Minister for Transport (as the case may be) if signed by such Minister or by any senior officer of the Public Service of the said State acting by the direction of any such Minister and forwarded by prepaid registered post to the Lessee at its address hereinafter stated and by the Lessee if signed on its behalf by a person authorised to do so and forwarded by prepaid registered post to the Minister for Lands or the Minister for Works or the Minister for Transport (as the case requires) at their respective offices in Perth AND any such notice consent request or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.
- (6) Subject at all times to the provisions of the Land Act 1933 if at the expiration of the term hereby granted there shall be no subsisting breach of any condition herein or in the Section 117 lease contained and on the Lessee's part to be observed or performed the Lessee shall be entitled to apply to the Minister for Lands for a further lease of the demised premises under Section 116 of the said Act for such term as will so far as possible under and subject to the provisions of that Act enable that further lease to expire on the same day as the Section 117 lease shall expire (or be determined as therein provided) AND otherwise upon and subject to all the other terms covenants and



conditions hereof SUBJECT ONLY TO such amendments as the said Minister in his sole and unfettered discretion may determine.

(7) In this lease unless the contrary intention appears -

“approach channel” means a channel of water not less than 15 metres in width connecting the entrance of the Yacht Harbour with water of a minimum depth of 4 metres below Low Water Mark Fremantle on such alignment as shall give suitable access to the open sea for all vessels using the Yacht Harbour;

“approve” “approval” “consent” or “direct” means approve approval consent or direct in writing as the case may be;

“Crown” means the Crown in right of the State of Western Australia;

“Lessee” means THE FREMANTLE SAILING CLUB INC. a body corporate constituted pursuant to the provisions of the Associations Incorporation Act 1895 of Marine Terrace South Fremantle in the State of Western Australia and includes the Lessee’s successors transferees and permitted assigns;

“Low Water Mark Fremantle” means that datum which at the date of commencement of the term of this lease is both 0.716 metres below Australian Height Datum (A.H.D.) and 0.756 below State Means Sea Level;

“Minister for Lands” means the Minister for Lands a body corporate by that name pursuant to the provisions of the Land Act 1933;

“Minister for Transport” means the Minister for Transport a body corporate by that name pursuant to the provisions of the Marine and Harbours Act 1981 and includes the Minister of the Crown to whom the administration of the Jetties Act 1926 and the Western Australian Marine Act 1948 is for the time being committed by the Governor and includes any Minister of the Crown for the time being discharging the duties of the office of that Minister;

“Minister for Works” means the Minister for Works a body corporate by that name pursuant to the provisions of the Public Works Act 1902;

“notice” means notice in writing;

“person” or “persons” includes corporate bodies;

“Yacht Harbour” means the Yacht Harbour and marina delineated and shown on the plan hereunto annexed as the fourth schedule incorporating the provision of breakwaters earthworks retaining walls jetties mooring areas pens slipways launching ramps fuelling facilities boat racks hard boat standings boat sheds clubhouse junior clubhouse licensed restaurant yacht broker’s premises chandler’s premises sailmaker’s premises fishing store kiosk garages fencing fish pond swimming pool toilet blocks car and trailer parking area landscaping access roads drainage works and all works buildings or improvements of a similar nature associated therewith or ancillary or incidental thereto and all to be built

constructed laid out installed established and operated on the demised premises and the Section 117 land under and in accordance with the provisions hereof and of the Section 117 lease;

Reference to any Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof or which forms part of or is incorporated therein and the regulations for the time being in force thereunder.

- (8) The parties may by written agreement executed by the Minister and Lessee vary or delete any term covenant or condition contained in this lease.

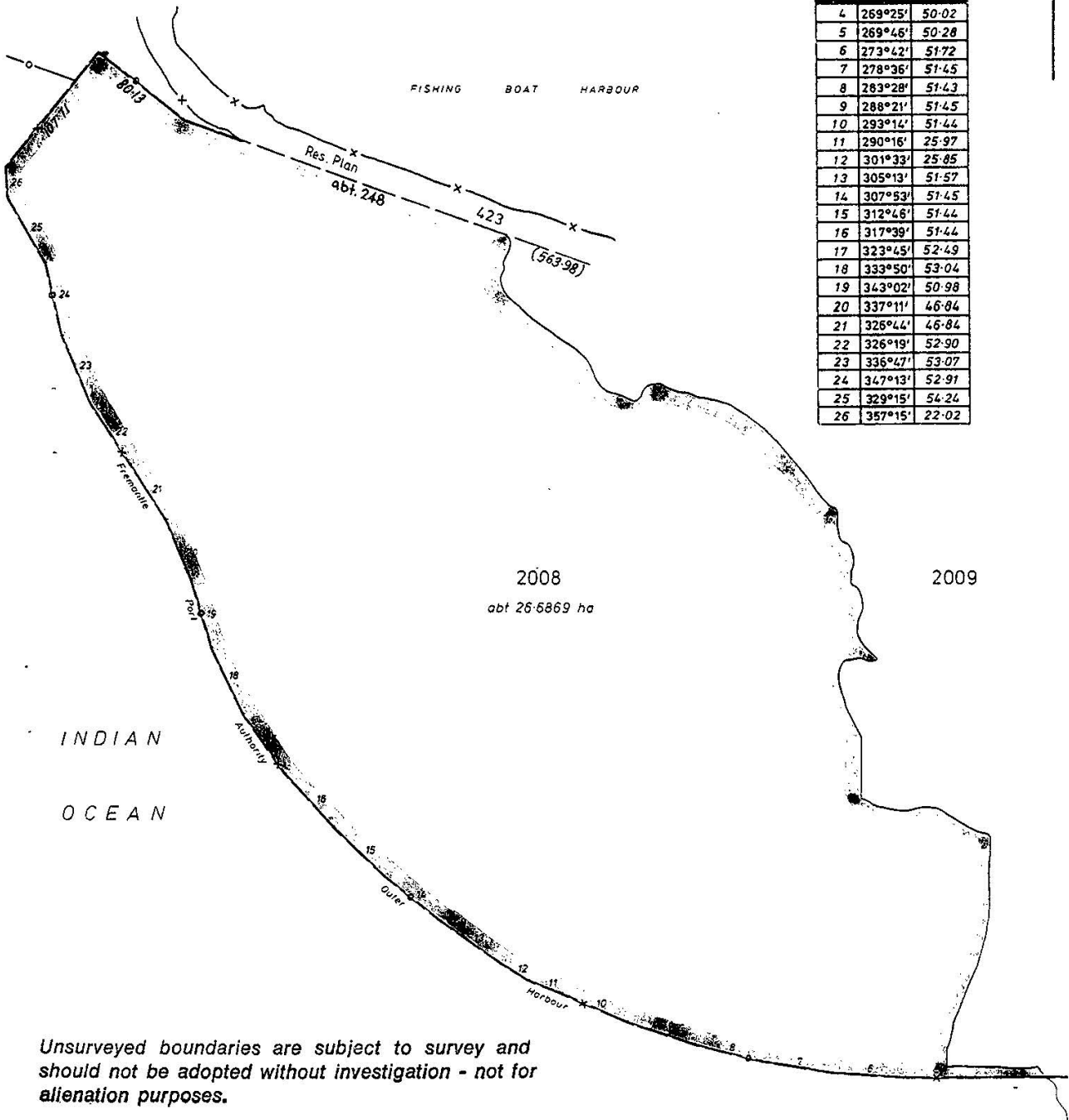
FIRST SCHEDULE

- (A) Fremantle Lot 2008 being ALL THAT portion of the surface of the sea-bed and the shore as exists from time to time and as is comprised within the area bordered green on the plan hereto annexed as the second schedule and so much of the space above and below and the soil below the said sea-bed and the said shore limited to :
- (a) a depth of ten metres below Low Water Mark Fremantle, and
  - (b) (notwithstanding the provisions of paragraph (a) of this Part) so much of the space above and below the surface of the said sea-bed and shore as exists from time to time as is occupied from time to time by any improvements constructed or provided by the Lessee
- but excluding all waters and all air space (other than the space referred to in paragraph (b) hereof) above the surface of the said sea-bed and shore as exists from time to time such Fremantle Lot 2008 being defined and delineated on Department of Land Administration Miscellaneous Plan No. 1428.
- (B) Fremantle Lot 2009 being ALL THAT piece of land as is comprised within the area bordered green on the plan hereto annexed as the third schedule and as defined and delineated on Department of Land Administration Miscellaneous Plan No. 1428.



**SECOND SCHEDULE**

SCHEDULE		
BDY	BNG	DIST.
4	269°25'	50-02
5	269°46'	50-28
6	273°42'	51-72
7	278°36'	51-45
8	283°28'	51-43
9	288°21'	51-45
10	293°14'	51-44
11	290°16'	25-97
12	301°33'	25-85
13	305°13'	51-57
14	307°53'	51-45
15	312°46'	51-44
16	317°39'	51-44
17	323°45'	52-49
18	333°50'	53-04
19	343°02'	50-98
20	337°11'	46-84
21	326°44'	46-84
22	326°19'	52-90
23	336°47'	53-07
24	347°13'	52-91
25	329°15'	54-24
26	357°15'	22-02

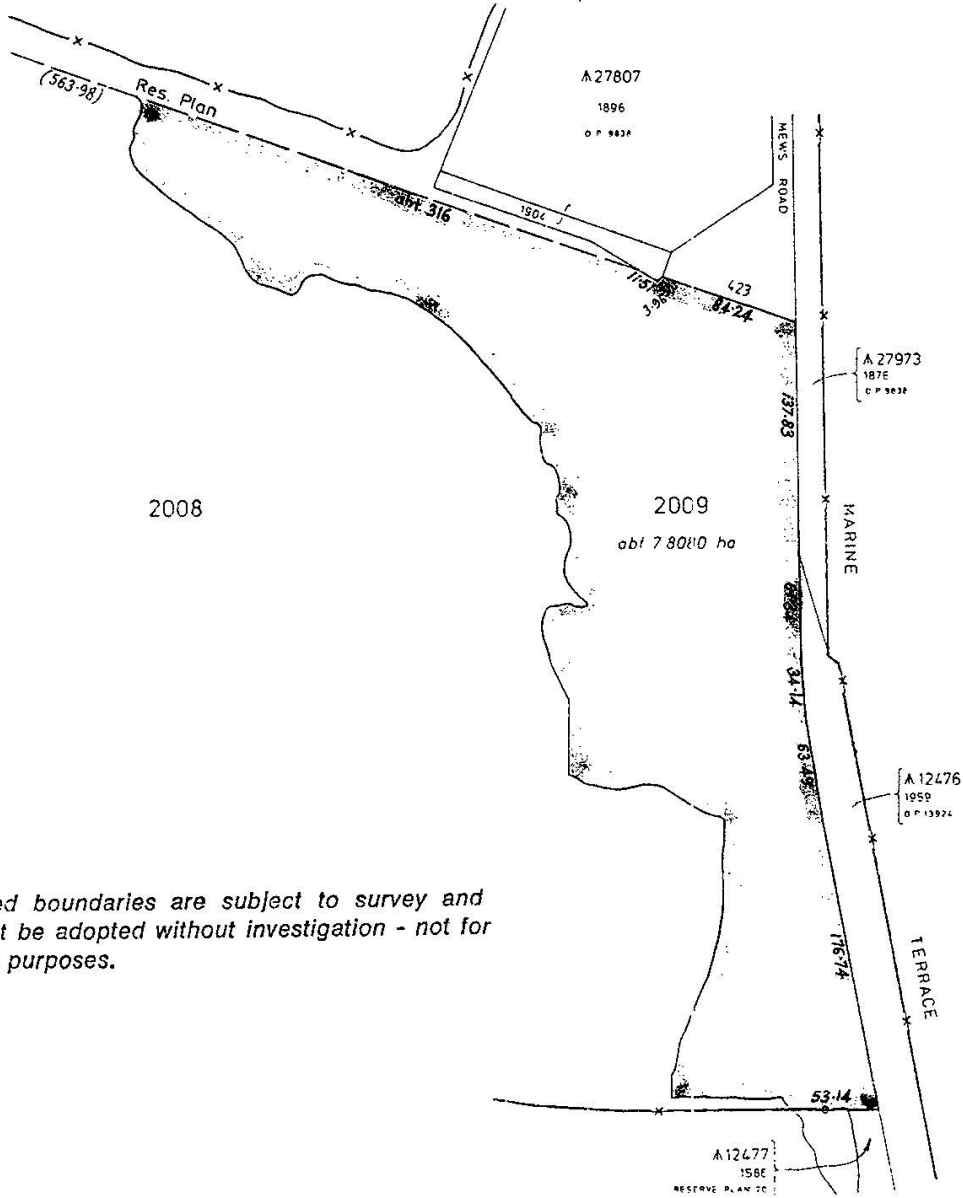


Unsurveyed boundaries are subject to survey and should not be adopted without investigation - not for alienation purposes.

Survey : MISC. PLAN 1428  
 Public : BG34 (2) 06.12, 07.11 & 07.12  
 Plan(s)  
  
 Corr : 2102/1976  
  
 Scale : 1 : 4000  
*df.* *RMB*

**THIRD SCHEDULE**

FISHING BOAT HARBOUR



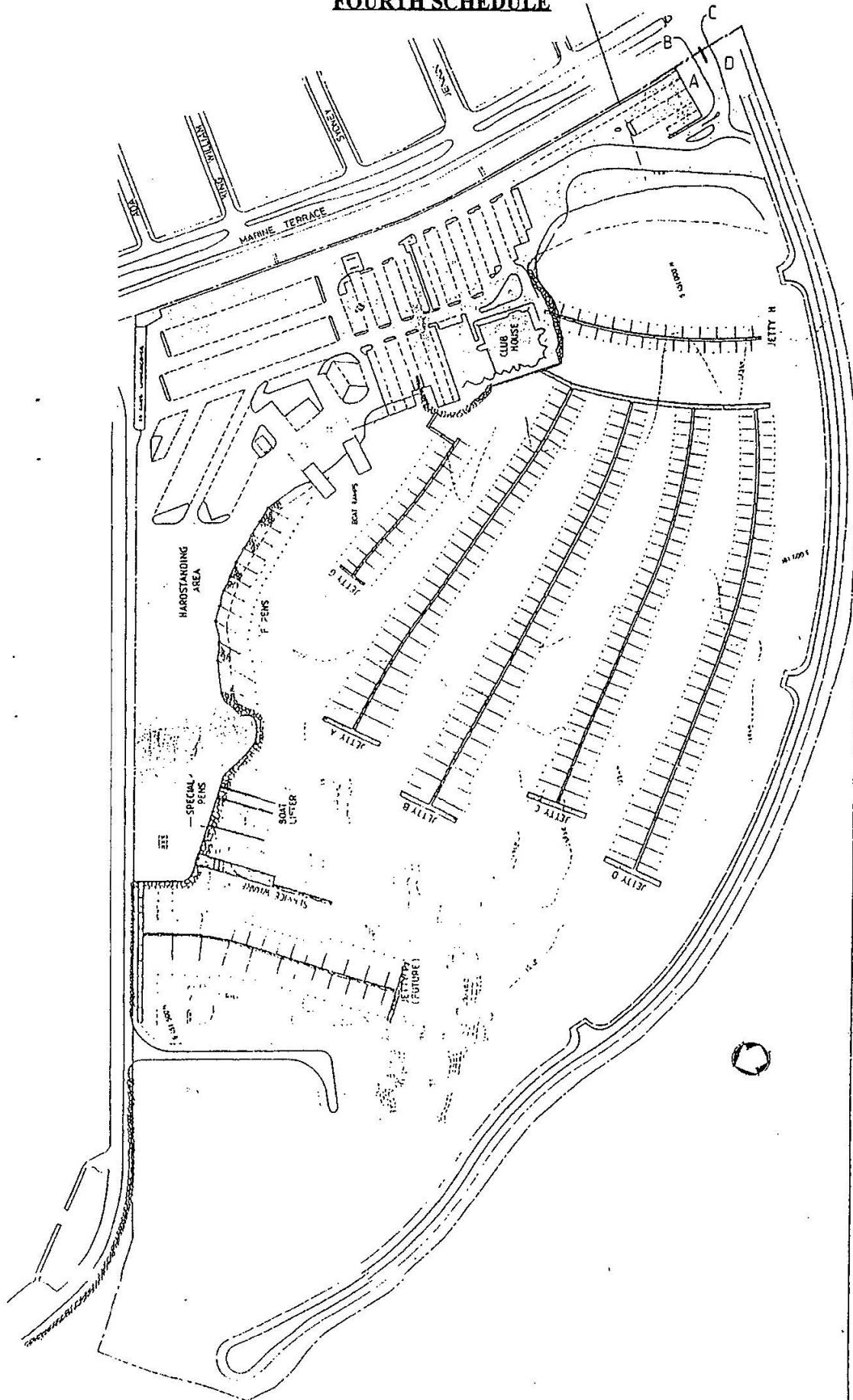
Unsurveyed boundaries are subject to survey and should not be adopted without investigation - not for alienation purposes.

Survey : MISC. PLAN 1428  
 Public : BG34 (2) 06.12, 07.11 & 07.12  
 Plan(s)

Corr : 2102/1976

Scale : 1 : 4000 *amb*

FOURTH SCHEDULE



<p>THE SUCCESS HARBOUR OVERALL LAYOUT</p> <p>DATE: 2000</p>	
<p>PREPARED BY: [Name]</p> <p>CHECKED BY: [Name]</p> <p>DATE: [Date]</p>	<p>SCALE: 1:2000</p> <p>PROJECT NO: [Number]</p> <p>CLIENT: [Name]</p>
<p>FREMANTLE SAILING CLUB INC.</p>	

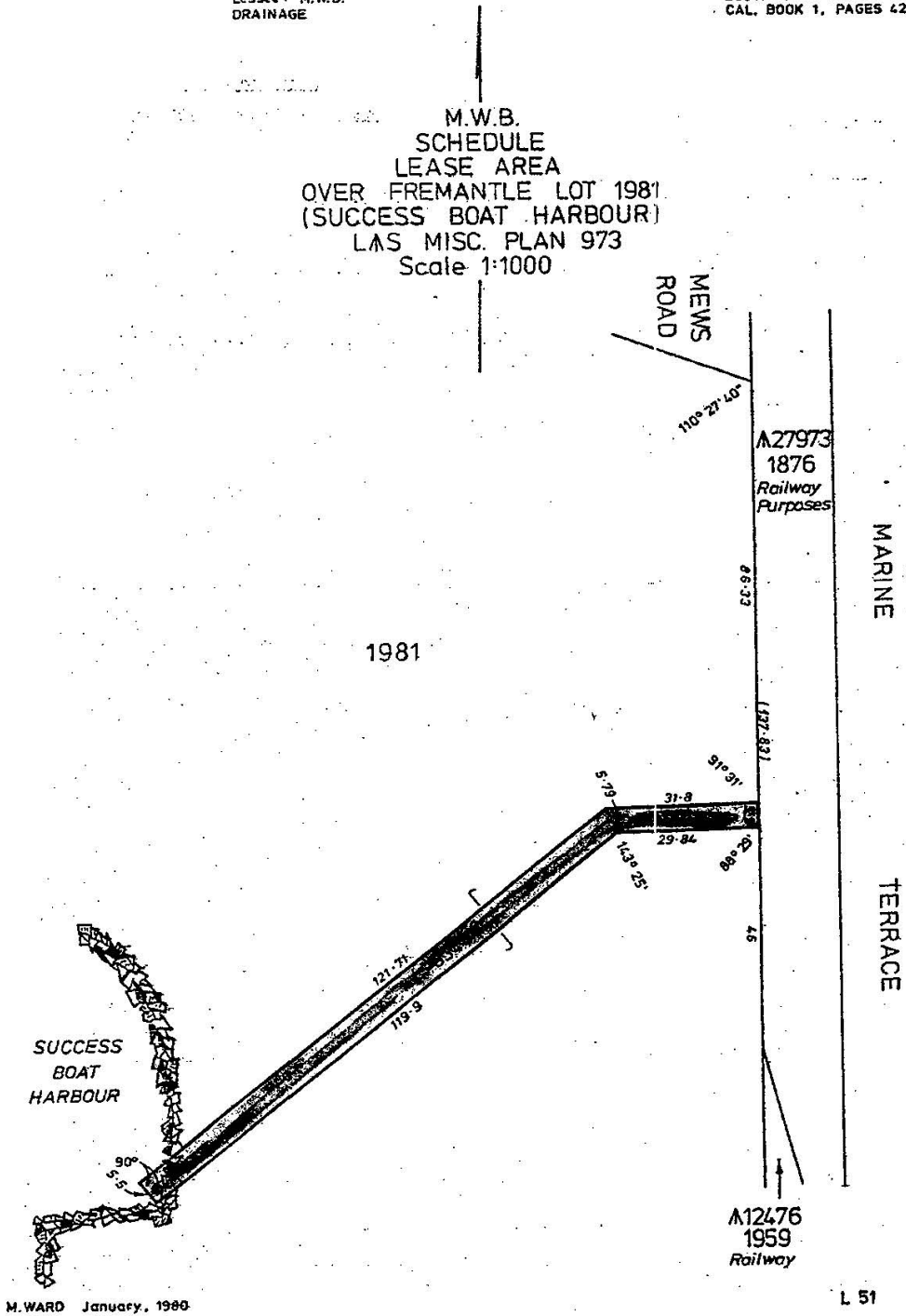


**FIFTH SCHEDULE**

LEASE  
Lessor: Fremantle Sailing Club  
Lessee: M.W.B.  
DRAINAGE

M.W.B. FILE N° 624551/6/78  
PERTH 1:2000 07-12  
SOUTH FREMANTLE  
CAL. BOOK 1, PAGES 42-45 incl.

M.W.B.  
SCHEDULE  
LEASE AREA  
OVER FREMANTLE LOT 1981  
(SUCCESS BOAT HARBOUR)  
LAS MISC. PLAN 973  
Scale 1:1000



M. WARD January, 1980

**SIXTH SCHEDULE**

Breakwaters  
Earthworks  
Retaining Walls  
Jetties  
Mooring areas  
Pens  
Slipways  
Launching ramps  
Fuelling facilities  
Hard boat standings  
Boat sheds  
Clubhouse  
Junior clubhouse  
Licensed restaurant  
Fishing store  
Kiosk  
Garages  
Fencing  
Toilet blocks  
Car and trailer parking area  
Landscaping  
Access roads  
Drainage works

IN WITNESS whereof this lease has been executed by or on behalf of the parties hereunto this

20th day of March 1998

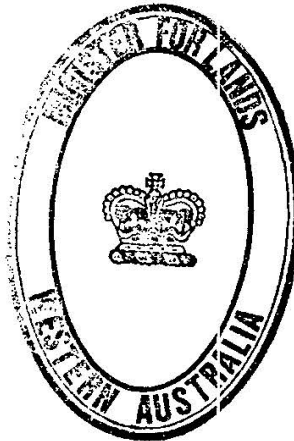
THE COMMON SEAL of the )  
MINISTER FOR LANDS was )  
hereunto affixed by me: )

*[Signature]*

MINISTER FOR LANDS  
in the presence of:

*[Signature]*  
WITNESS

Public Servant  
11th Floor, Dumas House  
2 Havelock Street  
WEST PERTH WA 6005



THE COMMON SEAL of )  
THE FREMANTLE SAILING CLUB )  
INC. was hereunto affixed by )  
authority of a Management )  
resolution of the Committee )  
of the Club in the presence of: )

*[Signature]*

FLAG OFFICER

*[Signature]*

FLAG OFFICER

*[Signature]*

GENERAL MANAGER



REGISTERED the 25th day of MARCH 1998  
in conformity with Section 81C of Act 56 Victoria No. 14 and numbered ... 298/1996 ...



*[Signature]*  
REGISTRAR OF TITLES