

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 9 March 1993.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. Ruth Richardson

BIRDLINGS FLAT LAND TITLES

[PRIVATE]

ANALYSIS

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A BILL INTITULED

An Act to effect the division of freehold land held in 57 individual undivided share certificates of title at Birdlings Flat into separate freehold titles

5 WHEREAS—

- (a) Freehold land at Birdlings Flat described in the **Schedule** to this Act (hereinafter referred to as the Birdlings Flat land) is held in one block in the names of the individual co-owners:
- 10 (b) The Birdlings Flat land was purchased on the 23rd day of October 1957 as an estate in fee simple as to 57 undivided one fifty-seventh shares:
- (c) The certificates of title issued to the co-owners by the Land Registry Office were for undivided shares in the whole of the Birdlings Flat land, the method of
- 15

No. 60—2A

- purchase was at the lowest cost and a subdivision into separate ownership in fee simple titles was not attempted because of the cost and the then applicable subdivisional requirements:
- (d) The area includes an established settlement of dwellings, outbuildings, roads, and access ways: 5
 - (e) The Birdlings Flat land is in excess of the area originally occupied by the co-owners due to the requirement that the minimum area for a rural subdivision was 10 acres at that time: 10
 - (f) The shares in the ownership of the Birdlings Flat land together constituting an informal trust ownership of dwellings and outbuildings has by custom and pursuant to that trust remained the personal property of the individual co-owners but is not included or shown on the title deeds or defined in any formal way: 15
 - (g) No equality of areas occupied by co-owners or value of ownership shares has ever existed and the areas occupied by co-owners and access ways have substantially altered over the years: 20
 - (h) The co-owners historically occupied and erected buildings which encroached on Crown grant road:
 - (i) There exists a history of disputes regarding boundaries, and disputes are incapable of being resolved due to the lack of legal definition of the occupied areas: 25

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- (j) The impossibility of obtaining all co-owners' consent in the issuing of building permits and drainage permits has in the past prevented the redevelopment contemplated and provided for in the applicable district scheme: 30

- (k) Various plans have been prepared by the co-owners, a registered surveyor, and the Wairewa County Council and generally show the occupation of the Birdlings Flat land and the areas unoccupied divided into roads, access ways, and unused land areas: 35
- (l) It is desirable that—
 - (i) Subdivision of the Birdlings Flat land be effected and separate certificates of title be issued to formalise the existing occupations; and 40

(ii) Certificates of title for the 57 occupied sections be issued to the co-owners; and

5 (iii) Certificates of title be issued for the areas presently unoccupied and that the surplus sections be sold to defray the costs of subdivision and sale, and other costs arising, and that any surplus sale money be divided among the co-owners; and

10 (iv) Provision be made for the appointment of a Commissioner to resolve any disputes as to boundaries, supervise the completion of title formalities and the sale of surplus sections, and to settle accounts:

(m) The objects of this Act cannot be achieved otherwise than by legislation:

15 BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Birdlings Flat Land Titles Act 1990.

20 **2. Interpretation**—In this Act, unless the context otherwise requires,—

“Access way” means private land used by the co-owners in common for access between legal roads and individual sections:

25 “Co-owner” means an owner of an estate in fee simple as to an undivided one or more fifty-seventh share in the Birdlings Flat land:

30 “Council” means the Banks Peninsula District Council; and includes any territorial authority which may in future have jurisdiction over any district in which is situated the Birdlings Flat land:

“Crown grant road” means that part of the unformed road adjoining the southern boundary of the Birdlings Flat land:

35 “Occupied area” means that part of the Birdlings Flat land customarily occupied by a co-owner and generally identified by way of informal boundary fences and occupation of dwellings as is generally shown by Lots 1 to 57 inclusive on the subdivision plan:

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“Planning Judge” means a District Court Judge appointed to the Planning Tribunal pursuant to the Town and Country Planning Act 1977:

“Subdivision plan” means the draft survey plan of the Birdlings Flat land lodged in the office of the Chief Surveyor at Christchurch: 5

“Separate certificate of title” means an individual estate in fee simple:

“Undivided share title” means ownership of a non-specific interest in the Birdlings Flat land: 10

“Unoccupied land” means that part of the Birdlings Flat land shown on the subdivision plan which is not built on by the co-owners and not used by the co-owners for residential purposes, access ways, or roading. 15

3. Subdivision to take place—The land (*shown*) described in the **Schedule** to this Act and presently held (*in joint ownership*) as tenants in common shall be subdivided in the manner provided by this Act into separate certificates of title with road and reserves to vest in the Council. 20

4. Power to survey established occupation, dwellings, outbuildings, road and beach access, and unoccupied areas—Notwithstanding anything in the Council’s district scheme or the ordinances in force under that scheme, or in the Local Government Act 1974, the Land Transfer Act 1952, or any other (*Acts*) Act— 25

(a) The present occupation of the Birdlings Flat land shall be the basis for the subdivision of that land subject only to variation in the manner provided in this Act to allow the issue of 57 separate certificates of title (to replace undivided share certificates of title), and unallocated certificates of title for land to be sold, access ways, road, and reserves: 30

(b) To avoid conflict with the Council’s town planning and subdivisional requirements, existing dwellings and other buildings on the Birdlings Flat land shall be recognised as having existing use rights: 35

(c) Access ways included in the subdivision shall be deemed to be rights of way over all such access ways as are to be delineated and shown on (*the*) a subdivision plan and shall be appurtenant to every portion of the land 40

in the subdivision plan and for the benefit of all co-owners:

- 5 (d) The part of the Birdlings Flat land delineated and shown on the subdivision plan as the northern-most road running parallel with the northern boundary shall be accepted as the subdivision road and shall be transferred to the Council as roadway:
- 10 (e) ~~(Those)~~ Such parts of the Birdlings Flat land not required for sections, access way, or ~~(road)~~ road as the Council determines, shall be transferred to the Council as the reserves contribution for the subdivision.

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- 15 **5. Appointment of Commissioner**—(1) The Minister of Justice shall appoint a Planning Judge, or a barrister or solicitor of the High Court of New Zealand, or some other suitable person with specialist knowledge of town and country planning legislation, as a Commissioner under this Act on such terms as the Minister sees fit and with the power to—
- 20 (a) Draw up, submit, and implement a scheme plan of subdivision; and
- (b) Determine a scheme plan acceptance and dispute notification procedure for both the co-owners and the Council; and

New

- 25 **5. Appointment of Commissioner**—(1) As soon as practicable after the commencement of this Act, the Minister of Justice shall appoint a barrister or solicitor of the High Court of New Zealand, or some other suitable person with specialist knowledge of resource management legislation, as a
- 30 Commissioner under this Act on such terms as the Minister sees fit and with the power to—
- (a) After consultation with the co-owners, draw up and submit a scheme plan of subdivision; and
- 35 (b) Execute all such documents and plans as may be necessary to give effect to this Act; and
- (c) Resolve any dispute as to boundaries and determine liability for payment of the costs and expenses

- incurred in resolving such disputes between the co-owners involved; and
- (d) Supervise the sale of surplus Birdlings Flat land; and
- (e) Determine the procedure for the sharing of expenses involved in the sale of surplus Birdlings Flat land and the division of the proceeds of sale; and 5
- (f) *(Decide)* Subject to section 167 of the Land Transfer Act 1952, decide the final form of the subdivision plan necessary to give effect to this Act in consultation with relevant Government Departments; and 10
- (g) Employ any persons necessary to give effect to this Act; and
- (h) *(Vest)* Make written orders which, when registered under the Land Transfer Act 1952, will vest separate certificates of title in separate co-owners and in the purchasers of surplus sections, and make such orders for the other purposes specified in this Act; and 15
- (i) Determine any other matters which may arise or relate to the division of the Birdlings Flat land into separate certificates of title. 20

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- (2) All costs and expenses incurred in promoting the legislation and the issue of separate certificates of title, including the Commissioner's fee and expenses, shall be a cost shared by the co-owners. 25
- (3) The moneys received from the sale of the surplus sections shall be applied first in settlement of such costs and expenses, and any surplus remaining from such sale after the payment of all such accounts shall be divided between all co-owners as directed by the Commissioner. 30

New

- (2) The Minister of Justice may at any time remove the Commissioner from office, and appoint another person as Commissioner, if the Minister is satisfied that the Commissioner is not properly carrying out, or is for any reason unable to carry out, the Commissioner's functions under this Act. 35
- (3) All costs and expenses incurred by the Commissioner, from the date of his or her appointment, in carrying out his or

New

her functions under this Act, including the Commissioner's fees and expenses, shall—

- 5 (a) Be a cost shared by the co-owners in proportion to the number of 1/57th shares held in the land by each co-owner; and
- (b) Be payable to the Commissioner; and
- 10 (c) Shall be recoverable by the Commissioner from the co-owners, severally, as a debt due to the Commissioner.
- (4) Any money received from the sale of surplus sections shall be applied first in settlement of such part of those costs and expenses as have not been paid pursuant to **subsection (3)** of this section, and any surplus remaining from such sale after the
- 15 payment of those costs and expenses shall be divided between all co-owners as directed by the Commissioner; but any amount so payable to any co-owner shall be reduced by any amount remaining unpaid by the co-owner under **subsection (3)** of this section.
- 20 (5) If the Commissioner has not succeeded in recovering the full amount of any money payable by any co-owner under this section, the Commissioner may fix a date on or before which it is payable and may recover the amount payable by the co-owner in the same manner in all respects as if it were a
- 25 separate rate made and levied under the Rating Powers Act 1988 payable on the date so fixed and as if the Commissioner was a local authority within the meaning of that Act; and the provisions of that Act relating to the recovery of rates shall apply accordingly.

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6. Entries in register—The District Land Registrar for the Canterbury Land Registration District is hereby authorised and directed to act upon the decisions and actions of the Commissioner appointed under this Act and to make such

35 entries in that Registrar's register, and do all such other things as may be necessary to give full effect to the purposes and the provisions of this Act, including the cancellation of the present certificates of title to the land when all of the Birdlings Flat land has been disposed of.

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6. Entries in register—The District Land Registrar for the Canterbury Land Registration District is hereby authorised to act upon the decisions and actions of the Commissioner appointed under this Act, and to make such entries in that Registrar’s register, and do all such other things as may be necessary to give full effect to the purposes and the provisions of this Act, including the partial cancellation of the present certificates of title to the land as orders under **section 5 (1) (h)** of this Act are registered, and the full cancellation of those certificates of title when all of the Birdlings Flat land has been disposed of.

6A. Right of appeal to District Court against decisions of Commissioner—(1) Any co-owner aggrieved by any decision of the Commissioner appointed under this Act in relation to the exercise of the Commissioner’s powers under this Act may, within 21 days after the date of the decision or within such further period as the Court on application may allow, appeal against that decision to the District Court having civil jurisdiction nearest to Birdlings Flat.

(2) The appellant shall ensure that a copy of the notice of appeal is served on the Commissioner, the Council, and on every co-owner (other than the appellant) within 14 days after the notice is lodged with the District Court.

(3) For the purposes of hearing the appeal the Court shall have all the powers, privileges, and immunities vested in it in its civil jurisdiction.

(4) On hearing the appeal the Court may—

- (a) Confirm or cancel the decision appealed against; or
- (b) Modify that decision in such manner, or impose such conditions, as the Court thinks fit.

(5) Every decision of a District Court under this section shall be final.

6B. No liability on Crown—Nothing in this Act shall be construed as requiring or authorising any expenditure of money by the Crown.

7. Private Act—This Act is hereby declared to be a private Act.

SCHEDULE

Section 3

All that piece of land in the Canterbury Land Registration District containing 5.6448 hectares, more or less, situated at Birdlings Flat, Wairewa, being Lot 1 on Deposited Plan 19343, and being also part of Rural Section 24349, Block VIII, Ellesmere Survey District.