

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Regional Development, Territories and Local Government

Norfolk Island Act 1979

Norfolk Island Land Transfer (Mulberry Lane) Ordinance 2018

Authority

The *Norfolk Island Act 1979* (the NI Act) provides for the government of the Territory of Norfolk Island. Section 19A of the NI Act provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory of Norfolk Island.

The *Norfolk Island Land Transfer (Mulberry Lane) Ordinance 2018* (the Ordinance) is made under section 19A of the NI Act.

Purpose and operation

The purpose of the Ordinance is to transfer certain interests in land situated around Mulberry Lane in Norfolk Island. The transfer would resolve an outstanding matter arising under a 1999 Agreement (the Agreement) made between the Commonwealth and Resort Investments Pty Limited (Resort Investments) to facilitate the realignment of Mulberry Lane. The realignment was intended to improve road safety and access to Queen Elizabeth Avenue.

Under the Agreement, Resort Investments agreed to pay for the construction of a road (new Mulberry Lane) on their land and to transfer the land on which the new road would be located to the Commonwealth. In exchange, the Commonwealth agreed to transfer part of the original Mulberry Lane road reserve (old Mulberry Lane) to Resort Investments.

In 2002, Resort Investments constructed new Mulberry Lane, in accordance with the Agreement. Public access to old Mulberry Lane ceased.

Attempts have since been initiated by both Resort Investments, and the subsequent landholders, to subdivide and transfer the land in accordance with the Agreement, the *Subdivision Act 2002* (NI) and the *Land Titles Act 1996* (NI). However, for a number of reasons, the subdivision and transfer was never completed.

In light of these previous difficulties, and to prevent further delays in honouring the original intent of the Agreement, the Ordinance is now the preferred mechanism to effect the subdivision and transfer. Section 62 of the NI Act allows land to be dealt with and transferred outside of the framework of the *Lands Acquisition Act 1989*, provided the acquisition is on just terms. When compared with other administrative processes available, the Ordinance would implement a more efficient and expedited process for all parties concerned.

The Commonwealth intends to subsequently transfer the land it acquires by virtue of the Ordinance to the Norfolk Island Regional Council pursuant to the *Norfolk Island Land Transfer Ordinance 2016*.

Consultation

The Department of Finance was consulted on the proposal, who advised that the Commonwealth Property Disposal Policy does not apply in these circumstances. The relevant landholders were also consulted, as was the Registrar of Titles of Norfolk Island. Geoscience

Australia and the Surveyor-General for Norfolk Island were also consulted and provided technical advice.

Other matters

The Ordinance is a legislative instrument for the purposes of the *Legislation Act 2003* (Cth).

The Ordinance commences the day after it is registered on the Federal Register of Legislation.

A Statement of Compatibility with Human Rights follows.

A detailed explanation of the provisions of the Ordinance is set out in the Attachment.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Norfolk Island Land Transfer (Mulberry Lane) Ordinance 2018

This Ordinance is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Ordinance

The purpose of the Ordinance is to transfer certain interests in land situated around Mulberry Lane in Norfolk Island. The transfer would resolve an outstanding matter arising under a 1999 Agreement (the Agreement) made between the Commonwealth and Resort Investments Pty Limited (Resort Investments) to facilitate the realignment of Mulberry Lane. The realignment was intended to improve road safety and access to Queen Elizabeth Avenue.

Under the Agreement, Resort Investments agreed to pay for the construction of a road (new Mulberry Lane) on their land and to transfer the land on which the new road would be located to the Commonwealth. In exchange, the Commonwealth agreed to transfer part of the original Mulberry Lane road reserve (old Mulberry Lane) to Resort Investments.

In 2002, Resort Investments constructed new Mulberry Lane, in accordance with the Agreement. Public access to old Mulberry Lane ceased.

Attempts have since been initiated by both Resort Investments, and the subsequent landholders, to subdivide and transfer the land in accordance with the Agreement, the *Subdivision Act 2002* (NI) and the *Land Titles Act 1996* (NI). However, for a number of reasons, the subdivision and transfer was never completed.

In light of these previous difficulties, and to prevent further delays in honouring the original intent of the Agreement, the Ordinance is now the preferred mechanism to effect the subdivision and transfer. Section 62 of the NI Act allows land to be dealt with and transferred outside of the framework of the *Lands Acquisition Act 1989* (Cth), provided the acquisition is on just terms. When compared with other administrative processes available, the Ordinance would implement a more efficient and expedited process for all parties concerned.

The Commonwealth intends to subsequently transfer the land it acquires by virtue of the Ordinance to the Norfolk Island Regional Council pursuant to the *Norfolk Island Land Transfer Ordinance 2016*.

Human rights implications

This Ordinance does not engage any of the applicable rights or freedoms.

Conclusion

This Ordinance is compatible with human rights as it does not raise any human rights issues.

**Minister for Regional Development, Territories and Local Government,
The Hon Dr John McVeigh MP**

Norfolk Island Land Transfer (Mulberry Lane) Ordinance 2018 (the Ordinance)

Section 1—Name

Section 1 of the Ordinance provides that the title of the Ordinance is the *Norfolk Island Land Transfer (Mulberry Lane) Ordinance 2018*.

Section 2—Commencement

Section 2 of the Ordinance provides that the Ordinance commences on the day after it is registered on the Federal Register of Legislation.

Section 3—Authority

Section 3 of the Ordinance states that the Ordinance is made under section 19A of the *Norfolk Island Act 1979* (Cth) (the NI Act).

Section 4—Definitions

Subsection 4(1) of the Ordinance contains a list of terms defined in the Ordinance for the purposes of interpreting the Ordinance. It provides that ‘landholders’ means Sandra Williamson and Lauren Hancock, ‘minerals’ means minerals in any form, whether solid, liquid or gaseous and whether organic or inorganic and ‘Official Survey’ means the Official Survey as existing under section 4 of the *Official Survey Act 1978* (NI) immediately before the commencement of this Ordinance. It also provides cross-references to the provisions containing the definitions of ‘current Mulberry Lane land’ and ‘old Mulberry Lane land’.

Subsection 4(2) of the Ordinance provides that the *Acts Interpretation Act 1901* does not apply to this Ordinance. As mentioned in the note to this subsection, the *Interpretation Act 1979* (NI) applies to the Ordinance instead (because the Ordinance is an enactment for the purposes of that Act).

Although the *Acts Interpretation Act 1901* does not apply to this Ordinance, it should be noted that many of the provisions contained in this Act do apply to section 19A Ordinances by virtue of section 8A of the *Interpretation Act 1979* (NI).

Section 5—Vesting of current Mulberry Lane land in the Commonwealth

Subsection 5(1) of the Ordinance provides that the fee simple interest in the current Mulberry Lane land that, immediately before the commencement of the Ordinance, was held as joint tenants by the landholders, as trustees for the Sandy Williamson Super Fund, is vested in the Commonwealth.

Subsection 5(2) of the Ordinance provides that the current Mulberry Lane land is freed and discharged from all other interests and from all trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates, other than a dedication of any part of the land as a public road under the *Roads Act 2002* (NI).

The note to subsection 5(2) states that the *Lands Acquisition Act 1989* (the LLA) does not prevent or affect the making or operation of section 5 (or section 6: see below), because of the operation of section 62 of the NI Act and subsection 5(3) of the LLA. Section 62 of the NI Act relevantly provides that the LLA does not prevent or affect the making of an enactment by which the Commonwealth acquires, disposes of or otherwise deals with Norfolk Island land, provided that any acquisition of land is on just terms. Subsection 5(3) of the LLA provides that if a provision referred to in section 62 of the NI Act is in operation, the LLA does not apply to anything dealt with by the provision.

Subsection 5(3) of the Ordinance provides a description of the land referred to as the ‘current Mulberry Lane land’ for the purposes of the Ordinance. The note to subsection 5(3) clarifies that the current Mulberry Lane land is part of the land on which Mulberry Lane was located at the commencement of the Ordinance. This parcel of land is the land belonging to the landholders, immediately before the commencement of the Ordinance, on which the realigned Mulberry Lane is currently located. This description reflects the advice of Geoscience Australia and the Cadastral Management Unit, Spatial Services, New South Wales Department of Finance, Services & Innovation, which provides cadastral services in Norfolk Island. Subsection 5(3) also refers to the Official Survey, which is available for inspection at the office of the Registrar of Titles of Norfolk Island during the business hours of that office (see section 10 of the *Official Survey Act 1978* (NI)). The reference is intended to be a reference to the Official Survey as at the point in time immediately before the commencement of the Ordinance.

Section 6—Granting of fee simple interest in old Mulberry Lane land to the landholders

Subsection 6(1) of the Ordinance provides that the landholders are granted a fee simple interest in the old Mulberry Lane land as joint tenants and as trustees for the Sandy Williamson Super Fund.

Subsection 6(2) of the Ordinance provides that the old Mulberry Lane land is, by force of this subsection, freed and discharged from all other interests and from all trusts, restrictions, dedications, reservations, obligations, encumbrances, contracts, licences, charges and rates. As mentioned above, this provision is permitted by section 62 of the NI Act.

Subsection 6(3) provides that subsections 6(1) or 6(2) do not affect any of the Commonwealth’s rights to any minerals in or on the old Mulberry Lane land. This includes ownership rights as well as rights to authorise others to explore. This reservation is to give effect to the 1999 Agreement made between the Commonwealth and Resort Investments Pty Limited (the Agreement). The Agreement relevantly provided for a reservation to the Commonwealth ‘of all minerals and mineral substances in or upon the land described ... together with the right to authorise any persons to enter upon the land to mine, work for, win, recover and move them or any of them and to do all things necessary or convenient for those purposes.’

Subsection 6(4) provides a description of the land referred to as the ‘old Mulberry Lane land’ for the purposes of the Ordinance. The note to subsection 6(4) clarifies that the old Mulberry Lane land is where part of Mulberry Lane was located before it was realigned onto the current Mulberry Lane land. This parcel of land is the land belonging to the Commonwealth, immediately before the commencement of the Ordinance, on which the former Mulberry Lane was located before the realignment of the road. This description reflects the advice of Geoscience Australia and the office of the Surveyor-General for Norfolk Island. Subsection 6(4) refers to the Official Survey, which is available for inspection at the office of the Registrar of Titles of Norfolk Island during the business hours of that office (see section 10 of the *Official Survey Act 1978* (NI)). The reference is intended to be a reference to the Official Survey as at the point in time immediately before the commencement of the Ordinance.

Section 7—Registering the interests in land etc.

Subsection 7(1) of the Ordinance provides that this section applies if there is lodged with the Registrar of Titles a certificate that is signed by the Minister that identifies an interest in land that has either been vested or granted under the Ordinance and states that the interest has so vested or has been so granted (as the case requires).

Subsection 7(2) of the Ordinance provides that the Registrar may register the matter in a way that is similar to the way in which dealings in land of that kind are usually registered and deal

with, and give effect to, the certificate. This means that the Registrar may register the relevant land interests vested or granted under the Ordinance under the *Land Titles Act 1996* (NI) and issue any appropriate documentation, for instance a certificate of title reflecting these transferred land interests. This item is a standard provision contained in Commonwealth laws effecting the transfer or vesting of land and allows land registration officials to deal with these interests as they would with the transfer or vesting of other land interests.

Subsection 7(3) of the Ordinance provides that where such a certificate identifies land granted to the landholders as mentioned in section 6 of the Ordinance, the certificate is taken to be a deed of grant for the purposes of the *Land Titles Act 1996* (NI).

Subsection 7(4) of the Ordinance provides that section 40 of the *Land Titles Act 1996* (NI) is also to apply as if it required the Registrar to create a single registered title covering the old Mulberry Lane land and any adjoining parcels of land that are held in fee simple by the landowners. Section 40 of that Act is to apply in this context as if subsection 40(2) were omitted. Subsection 40(2) would ordinarily outline the discretionary circumstances in which the Registrar may combine parcels of land in a single registered title. However subsection 40(2) is not appropriate in this case because it is mandatory for the Registrar to combine the relevant parcels of land under section 7 of the Ordinance. The effect of this provision is that the Registrar may issue a single certificate of title with respect to separate parcels of land presently held in fee simple by the landholders, where these parcels include the old Mulberry Lane land and any adjoining parcels of land.

Subsection 7(5) of the Ordinance also provides that any document purporting to be a certificate under section 7 is taken to be such a certificate, properly given, unless the contrary is established. This puts the burden on the person attempting to challenge the authenticity or validity of the certificate to establish that it is not a certificate under subsection 7(1) or not properly given.

Section 8—Exemption from taxes and fees

Section 8 of the Ordinance provides that no tax or fee is payable in relation to the vesting or granting of an interest in land under the Ordinance. This item is a standard provision contained in Commonwealth laws effecting the transfer or vesting of land and other assets.

Section 9—Compensation for acquisition of property

Section 9 of the Ordinance provides that if the operation of the Ordinance would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person, which may be sued for in a court of competent jurisdiction. This section ensures that the Ordinance complies with the terms of subsection 62(2) of the NI Act, which relevantly provides that an enactment under which land in the Territory is acquired by or vested in the Commonwealth and which provides for the acquisition of land must not be acquired otherwise than on just terms.