



ANNO VICESIMO SECUNDO

**ELIZABETHAE II REGINAE**

A.D. 1973

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**No. 92 of 1973**

An Act to provide for the deposit in the General Registry Office of a plan or plans to delineate more accurately the situation of allotments, streets, roads and reserves in the Township of Port Flinders; to establish title to those allotments, streets, roads and reserves; and for purposes incidental thereto.

*[Assented to 13th December, 1973]*

**Preamble.**

WHEREAS on the twelfth day of August 1849 Sir HENRY EDWARD FOX YOUNG Knight Lieutenant Governor of the province of South Australia granted unto ALEXANDER LANG ELDER, JOHN ELLIS and JOSEPH GILBERT TRUSTEES OF MOUNT REMARKABLE MINING COMPANY all that Section of land containing one hundred acres and numbered 1 situated at Port Germain Spencers Gulf County not named together with all timber minerals and appurtenances:

AND WHEREAS the plan on the Land Grant of the aforesaid Section 1 disclosed that the said Section was intersected by a government road and bounded by a perimeter government road:

AND WHEREAS on the seventeenth day of November 1849 the said ALEXANDER LANG ELDER the said JOHN ELLIS and the said JOSEPH GILBERT appointed JOHN GRAINGER as a new trustee in place of the said ALEXANDER LANG ELDER and on the same day the aforesaid Section 1 was conveyed to the said JOHN ELLIS the said JOSEPH GILBERT and the said JOHN GRAINGER in trust for the said MOUNT REMARKABLE MINING COMPANY:

AND WHEREAS by resolutions of shareholders of the said MOUNT REMARKABLE MINING COMPANY at meetings held on the ninth day and thirty-first day of July 1851 it was resolved that the said MOUNT REMARKABLE MINING COMPANY be dissolved:

AND WHEREAS the said JOHN ELLIS the said JOSEPH GILBERT and the said JOHN GRAINGER trustees of the said MOUNT REMARKABLE MINING COMPANY by Deed dated twenty-eighth day of December 1853 recited that the said MOUNT REMARKABLE MINING COMPANY had been dissolved and that the Board of Directors of the said MOUNT REMARKABLE MINING COMPANY were selling the real estate thereof in order finally to wind up and close the concerns of the said MOUNT REMARKABLE MINING COMPANY:

AND WHEREAS the said Board of Directors had for the purpose of sale caused part of the property of the said MOUNT REMARKABLE MINING COMPANY being *inter alia* the aforesaid Section 1 to be laid out in allotments streets and reserves as a Township and called the TOWNSHIP OF PORT FLINDERS and a map thereof was made showing such allotments streets and reserves:

AND WHEREAS it was intended in the description to be contained in the respective conveyances of the land sold by the said MOUNT REMARKABLE MINING COMPANY to refer *inter alia* to the said map and that it had therefore been deemed best to enrol the same and to execute the said Deed dated the twenty-eighth day of December 1853 for the purpose of identifying and connecting the said map with the said intended conveyances:

AND WHEREAS in the said Deed the said JOHN ELLIS the said JOSEPH GILBERT and the said JOHN GRAINGER declared that the said map *inter alia* delineated and shown in the said Deed was the map intended to be referred to by them in the several conveyances thereafter to be made by them of land in the said Township of Port Flinders:

AND WHEREAS the said Deed in which the said map of the said Township of Port Flinders was delineated was duly enrolled in the General Registry Office No. 86 Book 18 page 123 and is hereinafter referred to as "the said enrolled plan":

AND WHEREAS by divers conveyances registered in the General Registry Office all the allotments in the said Township of Port Flinders with the exception of Allotment 45 were sold by the said JOHN ELLIS the said JOSEPH GILBERT and the said JOHN GRAINGER by the direction of a quorum of the Board of Directors of the said MOUNT REMARKABLE MINING COMPANY:

AND WHEREAS all the said allotments including the said Allotment 45 are presently vested in current owners either by a documentary title or by title created by sale under the District Councils Act, 1914 or the Crown Rates and Taxes Recovery Act, 1945:

AND WHEREAS the perimeter road and intersecting road are vested in THE DISTRICT COUNCIL OF PORT GERMEIN:

AND WHEREAS the reserves and the remaining streets in the said enrolled plan appear to be still vested in the said JOHN ELLIS the said JOSEPH GILBERT and the said JOHN GRAINGER as trustees of the MOUNT REMARKABLE MINING COMPANY as no dealings therewith have been registered deposited or enrolled in the General Registry Office:

AND WHEREAS there is no current representative of the said MOUNT REMARKABLE MINING COMPANY available to join in any scheme whereby title difficulties to land in the said Township of Port Flinders could be resolved:

AND WHEREAS a re-survey of the said Township of Port Flinders, conducted by the Surveyor-General in the year 1928, disclosed that it was impossible to lay out the allotments streets and reserves in their correct relative positions as originally laid out in the said enrolled plan in that the subdivision as therein delineated could not be laid out on the ground within the limits of the coastline as therein disclosed:

AND WHEREAS because of such discrepancy doubts have arisen as to the identity of the land referred to and included in the various conveyances and other documents of title relating to the allotments streets and reserves in the said Township of Port Flinders:

AND WHEREAS due to arrears of rates a sale of several allotments in the said enrolled plan was effected pursuant to an Order of the Supreme Court made on the eighteenth day of November 1919 under the District Councils Act, 1914 and a request was made by the then Master of the Supreme Court to the Registrar-General for the issue to and in the name of the purchaser of a Certificate of Title under the Real Property Act:

AND WHEREAS the Registrar-General in order to issue the Certificate of Title as requested required a Licensed Surveyor's Plan to be produced by Messrs. Melrose and Homburg, solicitors for the purchaser named in the said request, to identify the land therein:

AND WHEREAS such Licensed Surveyor's Plan was never supplied to the Registrar-General who was therefore unable to issue a Certificate of Title pursuant to the said request:

AND WHEREAS in the year 1955 due to arrears of Crown rates and taxes further sales of other allotments in the said enrolled plan took place, this time under the Crown Rates and Taxes Recovery Act, 1945:

AND WHEREAS in consequence of such sales to various purchasers the Minister of Lands applied to the Registrar-General for titles to the land sold under the Crown Rates and Taxes Recovery Act, 1945 to be issued in the names of the said various purchasers:

AND WHEREAS the Registrar-General in order to issue Certificates of Title for the said land sold under Crown Rates and Taxes Recovery Act, 1945 required a Licensed Surveyor's Plan to be produced by the Crown Solicitor to identify the land so sold:

AND WHEREAS such Licensed Surveyor's Plan was never supplied to the Registrar-General who was therefore unable to issue the Certificates of Title pursuant to the application by the Minister of Lands:

AND WHEREAS in the years 1955 and 1962 further allotments in the said enrolled plan being the remaining allotments on which arrears of Crown rates and taxes were outstanding were offered for sale pursuant to the Crown Rates and Taxes Recovery Act, 1945:

AND WHEREAS at the offer for sale by public auction no bid was received and the said allotments offered for sale were conveyed to the Minister of Lands:

AND WHEREAS the Minister of Lands applied to the Registrar-General for Certificates of Title to be issued for such allotments in the name of the Minister of Lands:

AND WHEREAS because a Licensed Surveyor's Plan was again necessary to identify these allotments and such plan was never produced the Registrar-General was unable to issue Certificates of Title pursuant to the application by the Minister of Lands:

AND WHEREAS the Minister of Lands has agreed to sell two of the allotments (namely Allotments 28 and 64) conveyed to him after the auction referred to above to ALLEN MILLER WARD and AUDREY JANE WARD but no conveyance of the said allotments has yet been executed:

AND WHEREAS all the current legal or equitable owners of land in the said Township of Port Flinders are desirous of obtaining title under the Real Property Act to their land in the said Township of Port Flinders:

AND WHEREAS the said legal or equitable owners have agreed, for the purpose of resolving title difficulties in the said Township of Port Flinders, to substitute for the said enrolled plan a new plan based on a design prepared by the Surveyor-General.

AND WHEREAS a new plan of the said Township of Port Flinders has been prepared for the purpose of permitting Certificates of Title to be issued to the said legal or equitable owners of land in the said Township of Port Flinders which said new plan is intended to be deposited in the General Registry Office at Adelaide:

AND WHEREAS it has been found necessary in such new plan to alter the situation of various allotments streets and reserves as they appear in the said enrolled plan:

AND WHEREAS it is intended to substitute the said new plan of the Township of Port Flinders for the said enrolled plan:

AND WHEREAS in order to so establish such new plan of the said Township of Port Flinders it is first necessary to vest all the land in the said enrolled plan in the Minister of Lands:

AND WHEREAS it is intended that so soon as the Minister of Lands has become the owner of all the land in the said enrolled plan the Registrar-General be authorized to issue Certificates of Title for an estate in fee simple under the Real Property Act, 1886-1972, in the names of the respective owners of the various allotments streets and reserves in the said Township of Port Flinders to which they are entitled either at law or in equity, as set out in the schedule hereto, and in accordance with the said new plan.

BE IT THEREFORE ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

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| Short title.     | 1. This Act may be cited as the "Port Flinders Vesting Act, 1973".   |
| Commencement.    | 2. This Act shall come into operation on a day to be fixed by proclamation.  |
| Interpretation.  | 3. In this Act, unless the contrary intention appears—<br>"Port Flinders" means the Town of Port Flinders as laid out on the Plan:<br>"the Agreement" means a certain agreement between the Minister of Lands, the Commissioner of Highways, the District Council of Port Germein, Allen Miller Ward, Audrey Jane Ward, Alfred Joseph Curtis and Richard Jackson Morgan executed by the said Minister of Lands on the seventh day of December, 1972:<br>"the Minister" means the body corporate constituted by the Minister of Lands Incorporation Act, 1947:<br>"the Plan" means the plan attached to the Agreement:<br>"the Registrar-General" means the person for the time being holding the office of Registrar-General under the Real Property Act, 1886-1972, or the Registrar-General of Deeds under the Registration of Deeds Act, 1935-1973. |
| Vesting of land. | 4. On and from the commencement of this Act, the land comprised in Port Flinders shall, by force of this section, vest in the Minister for an estate in fee simple freed and discharged from any trust, estate, right, title, interest, claim, demand, duty or obligation of any description whatsoever.   |

5. (1) Subject to this section, the Registrar-General shall on the application of the Minister upon being furnished with such information as he requires and without regard to the form or procedure required by or under the Crown Lands Act, 1929-1973, or the Real Property Act, 1886-1972, cause certificates of title to be issued for the land comprised in Port Flinders in the names of the persons set out in the schedule to this Act for the respective allotments or areas set out in that schedule against the names of those persons without being obliged to make any further investigation of title or to make any public advertisement.

Duty of Registrar-General.

(2) The boundaries of the land to be comprised in the Certificates of Title to be issued under subsection (1) of this section shall be fixed by reference to the Plan as approved by the Surveyor-General and as deposited by the Minister in the General Registry Office at Adelaide or by reference to the Plan as amended by any amending plan so approved and deposited.

(3) Each Certificate of Title issued under subsection (1) of this section shall in all respects have effect as if it were a Certificate of Title issued under the Real Property Act, 1886-1972, and that Act shall apply and have effect accordingly.

6. As soon as practicable after the commencement of this Act, the Minister shall do all things necessary to carry out and give effect to the provisions of Clause 3 of the Agreement.

Action by Minister in relation to roads and reserves.

7. Notwithstanding any Act or law, stamp duty shall not be payable on any declaration or other document made or executed for the purposes of giving effect to this Act.

Stamp duty not payable on certain documents.

8. The Minister shall not be liable to any person for any loss or damage caused to any land, building or structure while pursuant to this Act that land, building or structure is vested in him.

Limitation on liability of Minister.

9. Notwithstanding anything in the Real Property Act, 1886-1972, any application made to the Registrar-General to bring any land comprised in Port Flinders under the provisions of that Act prior to the commencement of this Act may be disregarded by the Registrar-General.

Certain applications may be disregarded.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor

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**SCHEDULE**

<b>Section 5.</b>	<b>Name of Person Entitled to Ownership</b>	<b>Allotments in Port Flinders</b>
	<b>THE MINISTER OF LANDS .....</b>	Allotments 45 and 68 All roads shown on the Plan Allotments 1, 2 and 3 being reserves
	<b>The COMMISSIONER OF HIGHWAYS ...</b>	Allotments 42 and 50
	<b>THE DISTRICT COUNCIL OF PORT GERMEIN</b>	Allotments 53, 54 and 58
	<b>ALLEN MILLER WARD and AUDREY JANE WARD</b>	Allotments 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 36, 37, 38, 39, 40, 41, 43, 44, 46, 47, 48, 49, 51, 52, 55, 56, 57, 59, 62, 64, 65, 70, 71, 73 and 74
	<b>ALFRED JOSEPH CURTIS.....</b>	Allotments 34, 60, 61, 63 and 72
	<b>ALFRED JOSEPH CURTIS, as one of the executors of the will of Alex Bridger Curtis, deceased</b>	Allotments 27, 66, 67 and 69
	<b>RICHARD JACKSON MORGAN .....</b>	Allotment 35