

Riccarton Racecourse Development Enabling Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Riccarton Racecourse Development Enabling Bill and the Riccarton Racecourse Bill, and recommends that they be passed with the amendments shown.

Background

The Canterbury earthquakes in 2010 and 2011 caused widespread damage to Christchurch's housing stock. The shortage of housing was compounded by an increase in demand for housing from incoming workers, causing housing and rental prices to increase. Such pressures are likely to continue. The Department of Statistics expects Christchurch City to grow by 80,000 residents between 2013 and 2043.

The Board of Trustees that administers the Riccarton Racecourse reserve has proposed to convert part of the Riccarton Racecourse for housing. Legislation is needed to effect this change.

Introduction

The Riccarton Racecourse Bill, a local bill, and the Riccarton Racecourse Development Enabling Bill, a Government bill, are being considered together as cognate bills. Jointly, they would allow 40 of the racecourse's approximately 122 hectares of land to be developed for housing.

The Riccarton Racecourse is a racecourse reserve governed by the Christchurch Racecourse Reserve Act 1878 and the Reserves Act 1977.

The Riccarton Racecourse Bill would repeal the 1878 Act and re-enact the provisions necessary to authorise housing development and provide for the continued operation of the racecourse reserve and the continuance of the Board.

The Riccarton Racecourse Development Enabling Bill would revoke the reserve status of the land proposed for development and enable the Board to progress its proposal to develop the land for 600 houses. At least 180 of the new houses would need to fit the definition of an “affordable house”, as set out in clause 6 of the bill. If the affordable housing is not delivered within the time specified in this legislation, compensation would need to be provided to the Crown.

Under this legislation, a deed would be required to release the Crown from its obligations under Part 9 of the Ngāi Tahu Claims Settlement Act 1998. However, this legislation would then require the Board to grant Ngāi Tahu a new right of first refusal to the development land.

This commentary covers the main amendments that we recommend to the bills.

Riccarton Racecourse Development Enabling Bill

Development land

We recommend amending clause 9 to specify that the land being referred to for the development of housing is “development land”, as defined in clause 5. This amendment would align with the wording used elsewhere in the bill.

Some of us wanted additional minimum requirements for the development scheme such as housing that helps to promote sustainable energy efficient housing, walking and cycling, the use of public transport, and better protected open space and amenity values of the land. The majority of us believed that Christchurch City Council’s planning instruments were adequate.

Right of first refusal

For clarity, we recommend inserting new clause 10(da) and amending clause 10(e). These changes would better align the bill’s wording with the intended approach regarding the instrument to be signed by or on behalf of Ngāi Tahu and the Board.

Regulations Review Committee advice

We note the Regulations Review Committee’s advice about the commencement provisions in clause 2 of the Riccarton Racecourse Development Enabling Bill.

We consider the commencement provisions in this clause to be acceptable for the following reasons:

- A number of steps would need to be taken before it is clear whether the housing development could proceed. The timeline for the completion of these steps is unknown.
- A fixed commencement date could hamper the development’s initiation if the conditions were met before the specified date. We believe this would work contrary to one of the bill’s purposes—to assist with housing supply pressures in Christchurch.
- We were advised that it is not unusual for legislation relating to commercial arrangements to be linked to an event or the fulfilment of certain conditions.

- We consider that the commencement of this legislation would not be uncertain. Clause 2 of the bill outlines the time at which the legislation would come into force (or not if the required conditions are not met). We also note that the Order in Council would be known, as it would be *Gazetted*.

Riccarton Racecourse Bill

Commencement

We recommend inserting new clause 2(1A) into the commencement clause. This amendment would address the complexity of the commencement provisions in clause 2(1). Some of the terms in the interpretation clause (clause 4) of the bill are used in clauses 9 and 13, and would therefore need to come into force at the same time.

We recommend amending clause 2(2) to specify that all of clause 4, along with the rest of the bill, would come fully into force on the same day that the Riccarton Racecourse Development Enabling Bill came into force.

Transitional, savings, and related provisions

We recommend inserting new clause 4A and new Schedule 1 to provide for the transfer of rights and liabilities from the 1878 Act, which would be repealed.

All real and personal property vested in the Board, and its rights and liabilities, would continue following this legislation's enactment. All of the Board's pending legal proceedings would also continue.

Board of Trustees

We recommend amending clause 5(2) to specify that the Board would have the powers and authorities granted by this legislation, as opposed to section 3 of the 1878 Act.

As a consequence of this amendment and the insertion of Schedule 1, clause 5(3) would become redundant and we recommend that it be deleted. Amended clause 5(2) and inserted Schedule 1 would contain all of the Board's powers and authorities.

We recommend a small change to clause 12(b) for consistency. The bill as introduced uses the phrase "on race-days". We recommend instead using the same wording as in the 1878 Act and the Reserves Act.

Income from reserve land

Clause 8 of the bill states that the income received by the Board after the deduction of expenses must be spent on 1 or more of the listed purposes.

We recommend amending clause 8(a) to provide more detail about the way in which the reserve land might be cultivated and improved. We recommend this include, as an example, the protection of the amenity and open space values of the reserve land.

Appendix

Committee process

The Riccarton Racecourse Development Enabling Bill and the Riccarton Racecourse Bill were referred to the Local Government and Environment Committee on 3 November 2015. The closing date for submissions was 4 December 2015.

We received and considered 7 submissions from interested groups and individuals. We heard from 2 submitters in Christchurch.

We received advice from the Ministry of Business, Innovation and Employment, the Department of Conservation, and the Parliamentary Counsel Office. The Regulations Review Committee reported to us on clause 2 of the Riccarton Racecourse Development Enabling Bill.

Committee membership

Scott Simpson (Chairperson)

Matt Doocey

Paul Foster-Bell

Joanne Hayes

Tutehounuku Korako

Ron Mark

Todd Muller

Hon David Parker

Eugenie Sage

James Shaw

Meka Whaitiri

Dr Megan Woods participated in the consideration of this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr Nick Smith

Riccarton Racecourse Development Enabling Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Riccarton Racecourse Development Enabling Act **2015**.

2 Commencement

(1) Subpart 2 of Part 2— 5

(a) comes into force on the day after the date on which an Order in Council is made under **section 11**, if the order is made before the close of the day that is 1 year after the date on which this Act receives the Royal assent:

(b) otherwise never comes into force (because **section 3** applies). 10

(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Repeal

This Act is repealed on the close of the day that is 1 year after the date on which the Act receives the Royal assent if no Order in Council is made under **section 11** before that time. 15

Part 1

Preliminary provisions

4 Purpose

The purpose of this Act is to support Christchurch's recovery following the earthquakes of 2010 and 2011 by facilitating the expeditious residential development of certain land at Riccarton Racecourse, Christchurch. 20

5 Interpretation

In this Act, unless the context otherwise requires,—

affordable house has the meaning given in **section 6** 25

approval date, in relation to a development scheme, means the date on which an Order in Council for the scheme is made under **section 11**

Board means the body—

(a) named and incorporated under the Christchurch Racecourse Reserve Act 1878; and 30

(b) continued under **section 5** of the **Riccarton Racecourse Act 2015**

Crown has the meaning given in section 2(1) of the Public Finance Act 1989

development scheme or **scheme** means a scheme prepared under **section 9** of the **Riccarton Racecourse Act 2015** and under **sections 8 to 10** of this Act

house means a building or part of a building that is suitable for residential purposes and that is intended to be occupied primarily as the home or residence of not more than 1 household 5

Ministry means the department that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Paparua Stream land means that part of the development land that is 2.8700 hectares, more or less, being Section 5 SO 486359, Part computer freehold register CB47C/254 10

Riccarton Racecourse development land or **development land** means the land that is 40.3050 hectares, more or less, being Sections 2, 3, 4, and 5 SO 486359, Part computer freehold registers CB47C/254 and CB9F/515.

6 Meaning of affordable house 15

(1) In this Act, **affordable house** means a house that has a maximum sale price at the date on which the house is sold as required by **section 9(a)** of—

- (a) the amount at which a person eligible for a HomeStart grant in Christchurch City would be able to purchase the house and receive the grant; or 20
- (b) if the HomeStart grant scheme no longer exists as at that date, the last amount that applied under **paragraph (a)** when the HomeStart grant ceased; or
- (c) \$450,000 if the amount referred to in **paragraph (a) or (b)** (as the case may be) is less than \$450,000,— 25

and **affordable housing** has a corresponding meaning.

(2) For the purposes of **subsection (1)**,—

Christchurch City means the area that corresponds with the district of the Christchurch City Council

HomeStart grant means the government assistance programme commonly known as the KiwiSaver HomeStart grant or any programme that, with or without modification, replaces or corresponds to the KiwiSaver HomeStart grant 30

maximum sale price includes the land price if applicable.

7 Act binds the Crown

This Act binds the Crown. 35

Part 2

Riccarton Racecourse development

Subpart 1—Development scheme

8 Board may submit development scheme

The Board may submit a scheme to the Minister. 5

9 Minimum requirements of development scheme

A scheme submitted to the Minister must—

Minimum number of affordable houses requirement

- (a) require a minimum of 180 affordable houses on the development land to have been issued with code compliance certificates under the Building Act 2004, and to have been sold for occupation primarily as the home or residence of not more than 1 household, no later than 5 years after the approval date; and 10

- (b) provide for compensation payable to the Crown in accordance with **section 14** if that minimum number of affordable houses requirement is not met; and 15

Other requirements

- (c) be capable of satisfying the relevant regional and district planning requirements, including in relation to providing any infrastructure to service the development in the manner proposed by the scheme; and 20

- (d) provide for the transfer of the Paparua Stream land to the Christchurch City Council to be held as reserve or reserves no later than 5 years after the approval date; and

- (e) protect the interests of Ngāi Tahu in the development land as required by **section 10**; and 25

- (f) provide for fibre-optic broadband connections to be provided to all premises; and

- (g) explain how the Board will ensure that the development land is developed in a manner that will satisfy the requirements in this Act.

10 Ngāi Tahu right of first refusal 30

A scheme submitted to the Minister must be accompanied by a deed signed by or on behalf of the Crown, Te Rūnanga o Ngāi Tahu, and the Board that—

Existing right of first refusal

- (a) provides for the release of the Crown, as from the approval date for the scheme, on terms agreed with Te Rūnanga o Ngāi Tahu, from all legal or equitable obligations (including any fiduciary obligations) that are owed, 35

or that may be owed, by the Crown to Te Rūnanga o Ngāi Tahu in relation to the disposal of the development land; and

- (b) records the agreement of the Crown, Te Rūnanga o Ngāi Tahu, and the Board to the creation of computer registers in accordance with **section 17**; and

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- (c) records the agreement of the Crown and Te Rūnanga o Ngāi Tahu that the provisions of this Act replace the Ngāi Tahu Claims Settlement Act 1998 to the extent of the development land; and

New right of first refusal

- (d) provides for the conferral by the Board on Te Rūnanga o Ngāi Tahu of a right of first refusal to the development land, as from the day after the approval date for the scheme, to replace the rights in Part 9 of the Ngāi Tahu Claims Settlement Act 1998, with that right in an instrument signed by or on behalf of Te Rūnanga o Ngāi Tahu and the Board; and

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- (da) provides for the nature of that instrument (whether an encumbrance or other instrument) to be agreed between Te Rūnanga o Ngāi Tahu and the Board; and

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- (e) provides for that instrument to be registrable against the computer freehold register for the development land ~~(whether as an encumbrance or other instrument) as agreed with Te Rūnanga o Ngāi Tahu and provided for in the instrument.~~

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11 Approval of development scheme

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve a development scheme.
- (2) Before making a recommendation under **subsection (1)**, the Minister must—
 - (a) consult the Minister for Canterbury Earthquake Recovery; and
 - (b) consult the Christchurch City Council; and
 - (c) be satisfied that the scheme—
 - (i) meets the requirements in **sections 9 and 10**; and
 - (ii) will result in a quality residential development.
- (3) The order must identify, but need not contain, the scheme and the deed referred to in **section 10**.

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12 Effect of approval

- (1) If a development scheme is approved under **section 11**, an agreement between the Crown and the Board—
 - (a) is formed on the terms set out in the scheme; and
 - (b) is effective as from the day after the day on which the order is made.

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- (2) The agreement is enforceable according to its terms (including, to avoid doubt, the terms as to compensation).
- (3) This section applies despite—
 - (a) any rule of law or equity to the contrary relating to the enforceability of a contract containing 1 or more provisions that specify remedies in the event of a breach of the contract; and 5
 - (b) Part 9 of the Ngāi Tahu Claims Settlement Act 1998.

13 Publication of development scheme

As soon as is reasonably practicable after a scheme is approved, the chief executive of the Ministry must publish a copy of the scheme on an Internet site maintained by or on behalf of the Ministry so that it is publicly available, free of charge, at all reasonable times. 10

14 Compensation payable to the Crown if minimum affordable housing requirement not met

- (1) A scheme submitted to the Minister must— 15
 - (a) provide for the compensation payable by the Board to the Crown if a scheme is approved and the Board fails to meet the minimum number of affordable houses requirement referred to in **section 9(a)** within the 5-year time limit required by that section; and
 - (b) specify the amount payable, or the method to be used for calculating the amount payable, which must include or provide for the following: 20
 - (i) monthly compensation, starting 5 years after the approval date, of \$1,500 per month for each house by which the number of houses that meet the time limit in **section 9(a)** is less than 180; and
 - (ii) maximum compensation payable for each house of \$17,000 that is payable in full at the end of the 6-year period on the date that is 6 years after the approval date unless otherwise specified in the scheme; and 25
 - (iii) the remission of compensation in part or in whole if, for reasons specified in the scheme, it would be unreasonable for the Crown to enforce the compensation; and 30
 - (iv) the manner in which the compensation is remitted.
- (2) The compensation payable under this section is recoverable by the Minister, on behalf of the Crown, as a debt due to the Crown in the amount stated or determined in accordance with the terms of the development scheme. 35

Subpart 2—Change in status of development land on approval of development scheme

15 Revocation of reservation of development land as reserve

- (1) The reservation of the development land as reserve subject to the Reserves Act 1977 is revoked. 5
- (2) Sections 24 and 25 of the Reserves Act 1977 do not apply to the revocation.

16 Estate and interests in development land

- (1) The fee simple estate in the development land remains vested in the Board free of the trust provided for in the Christchurch Racecourse Reserve Act 1878 to hold the land for the purposes of racing. 10
- (2) The development land ceases to be relevant land under Part 9 of the Ngāi Tahu Claims Settlement Act 1998 (but, to avoid doubt, subject to the new right of first refusal referred to in **section 10(d)**).
- (3) To avoid doubt, nothing in this Act affects any other interest in the development land or that affects the development land (for example, existing leases or licences). 15

17 Creation of computer registers

- (1) The Board must, as soon as is reasonably practicable after the commencement of this subpart, apply in writing to the Registrar-General of Land citing this section. 20
- (2) The Registrar-General must comply with the rest of this section as soon as is reasonably practicable after receiving the application.
- (3) The Registrar-General must create a computer freehold register for the fee simple estate in the development land in the name of the Board and—
 - (a) record on the register any interests that are registered, notified, or notifiable and that are described in the application; and 25
 - (b) omit the notation of the words quoted in section 98(3) of the Ngāi Tahu Claims Settlement Act 1998 from the computer register.
- (4) The Registrar-General must create a computer register for Section 1 SO 486359, Part computer freehold registers CB47C/254 and CB9F/515 in the name of the Board and—
 - (a) note on the register that the land is racecourse reserve subject to the **Riccarton Racecourse Act 2015** and the Reserves Act 1977; and 30
 - (b) note on the register the words quoted in section 98(3) of the Ngāi Tahu Claims Settlement Act 1998. 35
- (5) **Subsection (2)** is subject to the completion of any survey necessary to create a computer freehold register.

- (6) **Subsection (3)** replaces any requirements of the Ngāi Tahu Claims Settlement Act 1998 in respect of notations on certificates of title or registered leases in relation to the development land.

Legislative history

19 October 2015
3 November 2015

Introduction (Bill 80–1)
First reading and referral to Local Government and Environment
Committee