



ANALYSIS

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1991, No. 104

An Act to provide for certain endowments of dry harbour land to be revested in the Crown or reserved for certain purposes, and to amend certain enactments

[3 October 1991

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

1. Short Title—This Act may be cited as the Harbour Boards Dry Land Endowment Revesting Act 1991.

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

“Chief Surveyor” has the same meaning as in the Survey Act 1986:

“Controlling authority” means,—

(a) In relation to any land specified in Part A of the Schedule to this Act, the Minister:

(b) In relation to any land specified in Part B of the Schedule to this Act, the Minister of Lands:

(c) In relation to any land specified in Part C of the Schedule to this Act, the local authority in which the land is for the time being vested:

“Harbour Board” means any Harbour Board constituted under the Harbours Act 1950 or any other enactment:

“Local authority” has the same meaning as in the Local Government Act 1974:

“Minister” means the Minister of Conservation:

“Successor” means the regional council or other local authority that is, by virtue of Part IIB of the Local Government Act 1974, the owner of land described in the Schedule to this Act:

“Treaty of Waitangi” has the same meaning as the word “Treaty” as defined in section 2 of the Treaty of Waitangi Act 1975.

3. Treaty of Waitangi—All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

4. Land to be revested in the Crown or held by local authority as reserve—(1) Notwithstanding anything in the Local Government Act 1974 or in any other enactment, but subject to subsections (2) to (8) of this section, the Governor-General may from time to time, by Order in Council,—

(a) Declare any area of land specified in Part A of the Schedule to this Act that is for the time being vested in a local authority, or any part of any such land,—

(i) To be revested in the Crown and held for conservation purposes and such other purpose or purposes under the Conservation Act 1987 as may be specified in the order; or

(ii) To be a reserve and to be classified for such purposes under the Reserves Act 1977 as may be specified in the order:

(b) Declare the land specified in Part B of the Schedule to this Act, or any part of that land, to be revested in the Crown and held for such purposes as may be specified in the order:

(c) Declare any area of land specified in Part C of the Schedule to this Act that is for the time being vested in a local authority, or any part of any such land, to be a reserve and to be classified for such purposes under the Reserves Act 1977 as may be specified in the order.

(2) Any strip of land not exceeding 20 metres in width that is revested in the Crown by an Order in Council made under

subsection (1) (a) of this section may be declared by the order to be held as a marginal strip for the purposes of the Conservation Act 1987.

(3) Where any land is declared under subsection (1) or subsection (2) of this section to be held for any purpose under the Conservation Act 1987, the provisions of that Act, with any necessary modifications, shall thereafter apply to that land,—

- (a) In the case of land declared to be held for conservation purposes, as if the declaration had been notified under section 7 of that Act; and
- (b) In the case of land declared to be held for any other specified purpose or purposes under that Act, as if the declaration had been notified under section 18 of that Act; and
- (c) In the case of land declared to be held as a marginal strip, as if the land were reserved as a marginal strip by section 24 of that Act.

(4) Where any land is declared under paragraph (b) of subsection (1) of this section to be revested in the Crown and held for any purpose not referred to in paragraph (a) of that subsection, the order shall have effect according to its tenor.

(5) Where any land is declared under paragraph (a) or paragraph (c) of subsection (1) of this section to be a reserve and to be classified for any purpose under the Reserves Act 1977, the provisions of that Act, with any necessary modifications, shall thereafter apply to that land as if the classification had been notified under section 16 of that Act.

(6) No Order in Council shall be made under subsection (1) of this section in respect of—

- (a) Any land that has been transferred to a port company pursuant to the Port Companies Act 1988; or
- (b) Any land identified at the commencement of this Act on a port company plan under that Act; or
- (c) Any land included in a proposed transfer of land to a port company pursuant to that Act, being a transfer that was commenced before the commencement of this Act but has not been completed.

(7) Upon the revesting of any land in the Crown under this section,—

- (a) The former vesting of that land in a local authority, whether pursuant to the Local Government Act 1974 or otherwise, shall be deemed to have been revoked; and
- (b) That land shall be deemed to be revested in the Crown as if it had never been alienated from the Crown and

free from all subsequent trusts, reservations, restrictions, and conditions.

(8) No Order in Council shall be made under subsection (1) of this section in respect of any specified land unless the land has been identified for the purposes of this section on a plan that is lodged in the office of the Chief Surveyor and is certified as correct for the purposes of this section by the Chief Surveyor.

5. Endowments of dry harbour land not to be sold without approval of Minister—(1) Any land that may be made subject to an Order in Council made under section 4 of this Act, but is not for the time being subject to an Order in Council made under that section, may be sold or otherwise disposed of only with the approval in writing of the Minister.

(2) The approval of the Minister under subsection (1) of this section—

- (a) May be given subject to such exceptions, restrictions, and conditions as the Minister thinks fit, including any condition or restriction requiring the vendor to deal with money received by the vendor from the sale or exchange of land in a manner specified by the Minister, or requiring the vendor to obtain the consent of the Minister to the terms of any agreement or of any specified kind of agreement proposed to be entered into by the vendor in the exercise of the powers to which the approval relates; and
- (b) Shall be notified in the *Gazette*; and
- (c) Shall take effect on the date of publication of such notice or such other date as the Minister may specify in the notice.

(3) Every agreement to sell or otherwise dispose of any such land, that is entered into without the approval of the Minister under this section, shall be unlawful and shall have no effect.

(4) Nothing in this Act shall apply to any land sold or otherwise disposed of in accordance with this section.

6. Protection of endowments of dry harbour land—

(1) Except with the approval in writing of the Minister, no person shall destroy, damage, or modify, or cause to be destroyed, damaged, or modified—

- (a) The whole or any part of any area of land specified in the Schedule to this Act that has not been sold or otherwise disposed of under section 5 of this Act; or

(b) Any of the natural resources or historic resources of any such area.

(2) The Minister may grant an approval under subsection (1) of this section subject to such conditions as he or she thinks fit, or may decline to grant an approval.

(3) Every person commits an offence against this Act who—

(a) Contravenes subsection (1) of this section; or

(b) Is in breach of any condition imposed by the Minister under subsection (2) of this section.

(4) In this section, “natural resources” and “historic resources” have the same meanings as in the Conservation Act 1987.

7. Saving of existing authorities, agreements, and rights—(1) Subject to this section, where an Order in Council is made under section 4 of this Act,—

(a) Every lease, licence, permit, consent, or other authority granted by a Harbour Board or a local authority (whether as a successor or otherwise); and

(b) Every agreement in writing by such a Board or local authority to grant a lease, licence, permit, consent, or other authority; and

(c) Every right within the meaning of the word “rights” as defined in section 2 of the Port Companies Act 1988 that has been transferred to a port company within the meaning of that Act, in accordance with a port company plan under that Act,—

that is, immediately before the commencement of that order, in effect in respect of any land specified in that order shall, to the extent to which it is lawful, continue to have effect in respect of that land according to its tenor.

(2) The Minister is hereby authorised to execute on behalf of the Crown any instrument or other document that is required to be executed by the Crown in respect of any land specified in the Schedule to this Act.

(3) The Controlling Authority may take all such proceedings as may be necessary to enforce any condition in any such lease, licence, permit, consent, or other authority as if the Controlling Authority had granted that authority.

(4) Where an Order in Council is made under section 4 of this Act, property that is fixed to, or under or over, any land to which that order applies (being property that was, immediately before the commencement of that order, owned by any person other than a local authority or the Crown) shall remain owned

by the person who owned it immediately before the commencement of that order, and the owner—

(a) Shall have reasonable access to the property; and

(b) May, after giving reasonable notice to the Controlling Authority, remove the property.

(5) Nothing in subsection (4) of this section shall limit or affect any lease, licence, permit, consent, other authority, agreement, or right continued in force by subsection (1) of this section.

8. Provisions relating to existing certificates of title—

(1) Every existing certificate of title in respect of any land revested in the Crown by an Order in Council made under section 4 of this Act that is not subject to any current registered lease or registered licence shall, on the request in writing of the Minister and without further authority than this subsection, be cancelled by the appropriate District Land Registrar.

(2) Where the certificate of title for any such land is subject to such a lease or licence, the appropriate District Land Registrar shall, on the request in writing of the Minister and without further authority than this subsection, make any necessary endorsements on the certificate of title, and the certificate of title shall thereafter enure the name of Her Majesty the Queen in right of New Zealand for the purposes of this Act until the expiration or sooner determination of the lease or licence, and shall then be cancelled by the District Land Registrar.

(3) Where the Minister makes any request under subsection (1) or subsection (2) of this section, the Minister shall also—

(a) Produce the duplicate of the certificate of title concerned to the District Land Registrar for cancellation or endorsement, as the case may require; or

(b) Certify that the duplicate is unavailable by reason of loss or damage.

9. Minister may apply for new certificates of title—

(1) The Minister may cause a plan of survey of any land revested in the Crown by an Order in Council made under section 4 of this Act to be made by a registered surveyor and approved by the Chief Surveyor, and lodge it for deposit at the office of the appropriate District Land Registrar.

(2) On or after the deposit of a plan of survey approved by the Chief Surveyor, the District Land Registrar shall, notwithstanding anything in the Land Transfer Act 1952, issue to Her Majesty the Queen in right of New Zealand for the

purposes of this Act a certificate of title under that Act in respect of the area to which the plan relates.

(3) Where a new certificate of title is issued for the purposes of this Act, the District Land Registrar shall cancel any other certificate of title in respect of the land concerned or partially cancel that other certificate of title, as the case may require.

(4) The District Land Registrar shall record against every such new certificate of title the order of priority of any registered leases or registered licences in respect of the land to which the certificate of title relates.

(5) Nothing in this section shall prevent the Minister applying in accordance with the provisions of the Land Transfer Act 1952 for the issue of a new certificate of title in respect of any area revested in the Crown by any Order in Council made under section 4 (1) of this Act.

10. Other Acts affected—The provisions of this Act shall have effect notwithstanding the provisions of the Land Transfer Act 1952 or any other enactment or rule of law relating to land.

11. Act not to render Crown liable for civil wrong—Nothing effected or authorised by or under this Act—

- (a) Shall be regarded as making the Crown guilty of a civil wrong; or
- (b) Shall be regarded as—
 - (i) Placing the Crown in breach of any contract, deed, agreement, or other instrument having effect in respect of any land specified in the Schedule to this Act; or
 - (ii) Assigning to the Crown any liability of any local authority under any such contract, deed, agreement, or instrument; or
- (c) Shall be regarded as placing the Crown or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any land or any other property.

12. Penalties—Every person who commits an offence against this Act is liable,—

- (a) In the case of a natural person, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$10,000, and, where the offence is a continuing one, to a further fine not exceeding \$1,000 for every day on which the offence has continued:

- (b) In the case of a body corporate, to a fine not exceeding \$80,000, and, where the offence is a continuing one, to a further fine not exceeding \$10,000 for every day on which the offence has continued.

13. Offenders liable for loss or damage—(1) Every person convicted of an offence against this Act shall be liable for any loss or damage or expenses arising from or caused by the act constituting the offence in addition to the penalty for the offence; and the amount payable in respect of the loss or damage or expense may be awarded by the Court in fixing the penalty and may be recovered as a fine.

(2) In assessing any amount payable under subsection (1) of this section, the Court may take into account salaries, wages, and incidental expenses incurred in the investigation of the act constituting the offence or in remedying the loss or damage caused by the act, and shall take into account all other relevant factors.

14. Amendment to Conservation Act 1987—The Conservation Act 1987 is hereby amended by inserting in the First Schedule, in its appropriate alphabetical order, the following item:

“The Harbour Boards Dry Land Endowment Revesting Act 1991”.

15. Repeals—The following enactments are hereby repealed:

- (a) Section 7 (1) of the Greymouth Harbour Board Act 1884:
(b) Section 74 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1912:
(c) Section 13 (10) of the Reserves and Other Lands Disposal Act 1982.
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SCHEDULE

PART A

Section 4 (1) (a)

DESCRIPTION OF LAND THAT MAY BE REVESTED IN THE CROWN FOR
CONSERVATION PURPOSES OR DECLARED TO BE RESERVE

Blacksmith Creek Sandspit: All that land containing 2.6911 hectares, more or less, and being all the land comprised and described in certificate of title No. 46C/105, North Auckland Registry.

Busby Head: All that land described in section 5 (2) of the Reserves and Other Lands Disposal Act 1942.

Havelock Harbour lands: All that land described in section 7 of the Havelock Harbour Board Act 1905, except—

- (a) Part Block A and Section 34 Block XII, Wakamarina Survey District, as shown on S.O. Plan 6186; and
- (b) The approaches to the Port of Havelock.

Jess Road Saltmarsh: All that land containing 10.9430 hectares, more or less, and being all the land comprised and described in certificate of title No. 21D/1031, South Auckland Registry.

Kerikeri Wharf: All that land described in the Schedule to the Proclamation published in the *Gazette*, 1941, No. 80, at p. 3189.

Manawatu River coastal strip: All that land comprising Part 3, Block II, Moutere Survey District.

Motueka Harbour lands: All that land—

- (a) Described in relation to the Port of Motueka in the *Gazette*, 1882, No. 74, at p. 1225;
- (b) Referred to in section 5 (b) of the Motueka Harbour Board Act 1905.

Napier Harbour lands: All that land described in the Second Schedule to the Napier Harbour Board Amendment and Endowment Improvement Act 1887, and known as Ahuriri Lagoon.

Nelson Harbour lands: All those portions of the land referred to in section 4 (a) of the Nelson Harbour Act 1905 and described in the First Schedule to that Act, known as the Boulder Bank, No-Mans Island, and Wakapuaka Sandflat (the last-mentioned land being all the land comprised and described in certificate of title No. 8B/1147, Nelson Registry).

New Plymouth Harbour lands: All that land—

- (a) Comprised and described in certificate of title, Volume 144, folio 101, Taranaki Registry;
- (b) Being all the dry land comprised and described in certificate of title, Volume 102, folio 148, Taranaki Registry.

Northland Harbour lands, Reotahi: All that land containing 21.0465 hectares, more or less, and being all the land comprised and described in certificate of title No. 26C/701, North Auckland Registry.

Otago Harbour lands: All that land—

- (a) Described in the Schedule to the Otago Harbour Board Indemnity and Lands Vesting Act 1888;
- (b) Described in the First and Second Schedules to the Otago Harbour Board Lands Vesting Act 1910.

Patea Harbour lands: All that land—

- (a) Comprised and described in certificate of title, Volume 141, folio 232, Wellington Registry;

SCHEDULE—*continued*PART A—*continued*DESCRIPTION OF LAND THAT MAY BE REVESTED IN THE CROWN FOR
CONSERVATION PURPOSES OR DECLARED TO BE RESERVE—*continued*

- (b) Vested in the Corporation of the County of Patea by section 12 of the Taranaki Harbours Act 1965, being land for the time being vested in the South Taranaki District Council.

Tauranga Harbour lands: All that land containing 1.6 hectares, more or less, and being all the land comprised and described in certificate of title No. 21D/1033, South Auckland Registry.

Wairoa Harbour lands: All that land—

- (a) Containing 136.9427 hectares, more or less, and being all the land comprised and described in certificate of title No. M3/248, Hawke's Bay Registry:
- (b) Containing 2.3478 hectares, more or less, and being all the land comprised and described in certificate of title No. M3/249, Hawke's Bay Registry:

Walker Island: All that land containing 7.1831 hectares, more or less, and being all the land comprised and described in certificate of title, Volume 975, folio 107, Auckland Registry.

Whakatane Harbour lands: All that land containing 8.1300 hectares, more or less, and being all the land comprised and described in certificate of title No. 18B/587, South Auckland Registry.

Whangarei Harbour lands: All that land—

- (a) Containing 38.4451 hectares, more or less, and being all the land comprised and described in certificate of title, Volume 80, folio 128, Auckland Registry:
- (b) Containing 40.9053 hectares, more or less, and being all the land comprised and described in certificate of title, Volume 117, folio 222, Auckland Registry:
- (c) Containing 18.6155 hectares, more or less, and being all the land comprised and described in certificate of title, Volume 80, folio 132, Auckland Registry:
- (d) Containing 5513 square metres, more or less, and being all the land comprised and described in certificate of title No. 43B/945, North Auckland Registry:
- (e) Described in the Third Schedule to the Whangarei Harbour Board Vesting and Empowering Act 1962:
- (f) Described in the Second Schedule to the Whangarei Harbour Act 1907:
- (g) All that land known as Pirate Island and Knight Island, situated in Whangarei Harbour, and being all the land comprised and described in the Schedule to the Whangarei Harbour Board Vesting and Empowering Act 1919.

Whangaruru Harbour lands: All that land—

- (a) Described in the Second Schedule to the Whangarei Harbour Board Vesting Act 1928, as shown on S.O. Plan 24847:
- (b) Described in section 3 (3) of the Reserves and Other Lands Disposal Act 1944, as shown on S.O. Plan 30999:

PART B

Section 4 (1) (b)

DESCRIPTION OF LAND THAT MAY BE REVESTED IN THE CROWN FOR ANY PURPOSES

Manukau Harbour lands: All that land containing 36.6198 hectares, more or less, and being all the land comprised and described in certificates of title, Volume 408, folio 119, and Volume 417, folio 196, Auckland Registry.

PART C

Section 4 (1) (c)

DESCRIPTION OF LAND THAT MAY BE DECLARED TO BE RESERVE

Chapel Street lands, Tauranga: A strip of land of 20 metres in width along the mark of mean high water springs of the sea situated within any of that land—

- (a) Containing 3253 square metres, more or less, and being all the land comprised and described in certificate of title No. 19A/358, South Auckland Registry:
- (b) Containing 2480 square metres, more or less, and being all the land comprised and described in certificate of title No. 19A/359, South Auckland Registry:
- (c) Containing 1087 square metres, more or less, and being all the land comprised and described in certificate of title No. 17B/894, South Auckland Registry:
- (d) Containing 657 square metres, more or less, and being all the land comprised and described in certificate of title No. 17B/977, South Auckland Registry:
- (e) Containing 354 square metres, more or less, and being all the land comprised and described in certificate of title No. 12A/179, South Auckland Registry:
- (f) Containing 2.2637 hectares, more or less, and being all the land comprised and described in certificate of title, Volume 1224, folio 47, South Auckland Registry.

Greymouth Harbour lands: All that land described in section 13 (16) of the Reserves and Other Lands Disposal Act 1982.

Grey River Mouth land: All that land—

- (a) Containing 2 acres and 8.1 perches, more or less, and being all the land comprised and described in certificate of title No. 2A/817, Westland Registry:
- (b) Containing 3.9580 hectares, more or less, and being all the land comprised and described in certificate of title No. 5C/707, Westland Registry.

Invercargill Harbour lands: All that land containing 14.2730 hectares, more or less, and being all the land comprised and described in certificate of title No. 7C/868, Southland Registry.

Lyttelton Harbour lands: All that land described in the Schedule to the Lyttelton Harbour Board Reclamation and Empowering Act 1910.

Manukau Harbour lands: All that land described in item 4 of the First Schedule to the Manukau Harbour Control Act 1911.

Mount Drury Signal Station Reserve: All that land containing 7 acres, 3 roods, and 24 perches, more or less, being Section 1, Block VII, Tauranga

PART C—continued

DESCRIPTION OF LAND THAT MAY BE DECLARED TO BE RESERVE—*continued*
Survey District, and being Part of the land described in the *Gazette*, 1941, at page 2620.

Napier Foreshore lands: All that land containing 221.5766 hectares, more or less, and being all the land comprised and described in certificate of title No. M2/729, Hawke's Bay Registry.

Tauranga City Marginal Strips: All that land—

- (a) Containing 1011 square metres, more or less, and being all the land comprised and described in certificates of title Nos. 13B/964 and 13B/965, South Auckland Registry:
- (b) Containing 3135 square metres, more or less, and being all the land comprised and described in certificate of title No. 13B/967, South Auckland Registry:
- (c) Containing 775 square metres, more or less, and being all the land comprised and described in certificate of title No. 27D/136, South Auckland Registry:
- (d) Containing 582 square metres, more or less, and being all the land comprised and described in certificate of title No. 13B/966, South Auckland Registry.

Tauranga Harbour lands: All that land—

- (a) Containing 3.83 hectares, more or less, and being all the land comprised and described in certificate of title No. 37A/439, South Auckland Registry:
- (b) Being Allotment 108, Tawhai Parish, situated in Block II, Katikati Survey District (S.O. Plan 24628):
- (c) Being Section 10A, Tawhai Parish, situated in Block IX, Katikati Survey District (S.O. Plan 414):
- (d) Containing 1012 square metres, more or less, and being all the land comprised and described in certificate of title, Volume 375, folio 41, Auckland Registry:
- (e) Being Allotment 31A, Te Mania Parish, situated in Block II, Aongatete Survey District (S.O. Plan 18315):
- (f) Containing 19.9307 hectares, more or less, and being all the land comprised and described in certificate of title No. 7A/904, South Auckland Registry:
- (g) Containing 1.2949 hectares, more or less, being all the land comprised and described in certificate of title No. 29A/262, South Auckland Registry:
- (h) Containing 708 square metres, more or less, and being all the land comprised and described in certificate of title, Volume 149, folio 270:
- (i) Being Allotment 133, Apata Parish, situated in Block VI, Aongatete Survey District (S.O. Plan 18315):
- (j) Being Allotment 216, Apata Parish, situated in Block III, Aongatete Survey District (S.O. Plan 18315):
- (k) Containing 18.98 hectares, more or less, and being all the land comprised and described in certificates of title Nos. 14A/15 and 23B/280, South Auckland Registry:

SCHEDULE—*continued*PART C—*continued*DESCRIPTION OF LAND THAT MAY BE DECLARED TO BE RESERVE—*continued*

- (l) Containing 2.8353 hectares, more or less, and being all the land comprised and described in certificate of title No. 14c/983, South Auckland Registry:
- (m) Being Allotment 237, Te Puna Parish, situated in Block VIII, Tauranga Survey District:
- (n) Containing 13.0196 hectares, more or less, and being all the land comprised and described in certificate of title No. 37c/668, South Auckland Registry:
- (o) Containing 0.4047 hectares, more or less, and being all the land comprised and described in certificate of title, Volume 575, folio 24, Auckland Registry:
- (p) All that land being landing reserve (*Gazette*, 1902, at page 1909) and Part Allotment 181, Te Puna Parish, situated in Block II, Tauranga Survey District.

Waimakariri Harbour lands: All that land described in the First Schedule to the Waimakariri Harbour Act 1946.

Wairoa Harbour lands: All that land—

- (a) Containing 18.24 hectares, more or less, and being all the lands comprised and described in certificate of title, Volume 30, folio 168, Hawke's Bay Registry:
- (b) Containing 23 acres 1 rood 37 perches, being river margins, and being Part Section 9, Block II, Clyde Survey District:
- (c) Being Section 1, Block V, Clyde Survey District:
- (d) Being Section 831, Borough of Wairoa, Township of Clyde:
- (e) Being Lot 2, Deposited Plan 3350, Part Rural Section 17, Block V, Clyde Survey District.

Wanganui Harbour lands: All that land—

- (a) Containing 7.7 hectares, more or less, and being all the land comprised and described in certificate of title No. 5D/124, Wellington Registry:
- (b) Described in section 53 of the Wanganui Harbour and River Conservators Board Act 1876, and in the Schedule to that Act.

Whakatane Harbour lands: All that land containing 4055 square metres, more or less, and being part of the land comprised and described in certificate of title No. 47B/472, South Auckland Registry.

Whatipu Endowment: All that land containing 384.4513 hectares, more or less, and being all the land comprised and described in certificate of title, Volume 945, folio 245, Auckland Registry.