



## ANALYSIS

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1965, No. 26

**An Act to amend the Public Works Act 1928**

[24 September 1965]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title**—This Act may be cited as the Public Works Amendment Act 1965, and shall be read together with and deemed part of the Public Works Act 1928 (hereinafter referred to as the principal Act).

**2. Hearing of objections**—(1) Section 22 of the principal Act (as amended by section 3 of the Public Works Amendment Act 1963) is hereby further amended by inserting, after paragraph (d) of subsection (1), the following paragraph:

“(dd) Shall in the notice state that, if any objection is made in accordance with paragraph (d) of this subsection, a public hearing of the objection will be held unless the objector otherwise requires, and that each objector will be advised of the time and place of the hearing; and”.

(2) Section 22 of the principal Act, as so amended, is hereby further amended by adding to paragraph (f) of subsection (1) the words "At the hearing of any objection the objector shall be advised of the reasons for the proposed taking".

**3. Taking of land by Proclamation**—Section 23 of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraph:

"(d) The Governor-General may thereupon, if he thinks fit, by Proclamation declare that the said lands, a list whereof shall be contained in or annexed to the Proclamation, are taken for the public work therein mentioned. Every such Proclamation shall (except where the lands to which it relates are taken by agreement) be publicly notified within one month after the date of the making thereof; and every such public notification shall contain some readily identifiable description of the lands taken, but a Proclamation shall not be invalidated by any error, defect, or delay in the public notification thereof."

**4. Exchange of land**—(1) The principal Act is hereby amended by repealing section 99, and substituting the following section:

"99. (1) In payment or satisfaction or in part payment or part satisfaction of the compensation payable for any land taken, purchased, or acquired for a public work, or for any damage done by reason of the construction or use of a public work, there may be granted to the person entitled any Crown land or any land reserved, taken, purchased, or acquired for any public work, or for the use, convenience, or enjoyment of any public work, if the land to be granted is not required for any public work.

"(2) On completion of such surveys (if any) as may be necessary, the Commissioner of Works or the General Manager of Railways may, in respect of any land granted under subsection (1) of this section, file in the office of the District Land Registrar a certificate by the Commissioner of Works or an Assistant Commissioner of Works or the General Manager of Railways in the form set out in the Twelfth Schedule to this Act, as inserted by subsection (2) of section 4 of the Public Works Amendment Act 1965. Every such certificate shall have the same effect as a warrant issued under the hand of the Governor-General; and for the purposes of section 12 of the Land Transfer Act 1952 shall be deemed to be such

a warrant; and the District Land Registrar shall, without payment of any fee, issue a certificate of title for the land in Form number 1 in the First Schedule to that Act.

“(3) For the purposes of this section the term ‘land’ includes any estate or interest in land.

“(4) Before any land is granted to any person under this section, the Chief Surveyor of the district shall, where he considers it necessary or expedient, assign to the whole or any part of the land which is to be referred to in any such certificate by the Commissioner of Works or an Assistant Commissioner of Works or the General Manager of Railways a description sufficient for the purpose, and shall cause that description to be marked on the record maps.

“(5) The land comprised in any certificate of title issued pursuant to such a certificate by the Commissioner of Works or an Assistant Commissioner of Works or the General Manager of Railways shall be deemed to be subject to the Land Transfer Act 1952 as from the date fixed by the last-mentioned certificate as the date of acquisition of title thereto, and that date shall for all purposes whatsoever be deemed the antevesting date in the same manner as if the antevesting date had been inserted in a Crown grant of the land.

“(6) Where any land that is subject to any encumbrance, lien, or interest is taken, purchased, or acquired and land is to be granted in exchange under this section,—

“(a) With the consent of the person to whom the land is to be granted, the certificate by the Commissioner of Works or an Assistant Commissioner of Works or the General Manager of Railways may show that the land to which his certificate relates is to be subject to any such encumbrance, lien, or interest that is specified in the certificate; and

“(b) Where the certificate shows that the land to which it relates is to be subject to any encumbrance, lien, or interest, the certificate of title shall be issued subject to every encumbrance, lien, or interest so shown in order of the original registered priority thereof.

“(7) Every instrument creating or evidencing or affecting any such encumbrance, lien, or interest, and all covenants and other provisions expressed or implied therein, shall be construed as if the land for which the certificate of title is issued were the land, or (as the case may be) part of the land, to which the instrument relates.

“(8) On the issue of any such certificate of title subject to any registered encumbrance, lien, or interest as aforesaid, the District Land Registrar or the Registrar of Deeds shall enter in the appropriate register, and record on any relevant instrument, memorials showing the combined effect of subsections (6) and (7) of this section and the certificate.

“(9) Where any land that is subject to any reservation or restriction is taken, purchased, or acquired and land is to be granted under this section, the land so granted shall, unless the Commissioner of Works or an Assistant Commissioner of Works or the General Manager of Railways otherwise directs in the certificate issued by him as aforesaid, be issued subject to that reservation or restriction and also to any reservation that affects the land under section 8 of the Coal Mines Amendment Act 1950.

“(10) Every certificate by the Commissioner of Works or an Assistant Commissioner of Works or the General Manager of Railways shall be conclusive evidence to the District Land Registrar of the matters required or permitted by this section to be therein stated, and that all consents required under this section have been obtained:

“Provided that before any land is so granted the consent of the Minister having control of the land shall be obtained.”

(2) The principal Act, as amended by subsection (3) of section 25 of the Public Works Amendment Act 1948, is hereby further amended by adding the Twelfth Schedule set out in the First Schedule to this Act.

(3) The following enactments are hereby consequentially repealed:

(a) Section 48 of the Statutes Amendment Act 1940:

(b) Section 3 of the Public Works Amendment Act 1955.

**5. Dedication on sale**—Subsection (9) of section 125 of the principal Act is hereby amended by adding to the definition of the term “sale” the words “other than a lease of part of a building”.

**6. Exchange of land for roads**—(1) Section 151 of the principal Act is hereby amended by repealing paragraph (c) of subsection (1), and substituting the following paragraph:

“(c) The Chairman of the Road Board shall complete a certificate in the form set out in the Thirteenth Schedule to this Act, as inserted by subsection (4) of section 6 of the Public Works Amendment Act 1965.”

(2) Section 151 of the principal Act is hereby further amended—

- (a) By omitting from paragraph (d) of subsection (1) the words “Such copy of certificate so endorsed”, and substituting the words “The certificates referred to in paragraphs (b) and (c) of this subsection”:
- (b) By omitting from paragraph (d) of subsection (1) the words “said paragraph”, and substituting the words “last-mentioned paragraph”.

(3) Section 151 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsections:

“(1A) Where any land that is taken, purchased, or acquired for the road to be made in the place of the road stopped under section 148 of this Act is subject to any registered encumbrance, lien, or interest,—

“(a) With the consent of the person who is to receive the land occupied by the stopped road that is being exchanged therefor, the certificate in the form set out in the said Thirteenth Schedule to this Act signed by the Chairman of the Road Board may show that the land to which the certificate relates is to be subject to any such encumbrance, lien, or interest that is specified in the certificate; and

“(b) Where the certificate in the form set out in the said Thirteenth Schedule shows that the land to which it relates is to be subject to any encumbrance, lien, or interest, the District Land Registrar or the Registrar of Deeds shall notify on the certificate of title for the land to which the certificate relates that the land is subject to every such encumbrance, lien, and interest, and if more than one in order of the original registered priority thereof, and shall enter in the appropriate register and record on any relevant instrument memorials showing the combined effect of this section and of the relevant certificates filed with him under this section.

“(1B) Every instrument creating or evidencing or affecting any such encumbrance, lien, or interest, and all covenants and other provisions expressed or implied therein, shall be construed as if the stopped road so exchanged were the land, or (as the case may be) part of the land, to which the instrument relates.

“(1c) Where any land that is subject to any reservation or restriction is taken, purchased, or acquired for the road to be made in the place of the road stopped under section 148 of this Act, and any land occupied by the stopped road is exchanged therefor under this section, the certificate of title for the last-mentioned land shall, unless the Chairman of the Road Board otherwise directs in the certificate issued by him as aforesaid, be issued subject to that reservation or restriction, and also to any reservation that affects the land under section 8 of the Coal Mines Amendment Act 1950.

“(1d) Every certificate by the Chairman of the Road Board shall be conclusive evidence to the District Land Registrar of the matters required or permitted by this section to be stated therein, and that all consents required under this section have been obtained.”

(4) The principal Act, as amended by subsection (2) of section 4 of this Act, is hereby further amended by adding the Thirteenth Schedule set out in the Second Schedule to this Act.

**7. Taking and closing of roads and streets—**(1) Section 29 of the Public Works Amendment Act 1948 is hereby amended—

(a) By omitting from subsection (1) the words “Governor-General may, by Proclamation”, and substituting the words “Minister may, by notice published in the *Gazette*”:

(b) By omitting the word “Governor-General” in each place where it appears in subsections (3), (5), (6), (11), and (16), and substituting in each case the word “Minister”:

(c) By omitting the word “Proclamation” where it first appears in subsection (6) and where it appears in subsections (12) and (17), and substituting in each case the word “proclaiming”:

(d) By omitting the word “Proclamation” in each other place where it appears in the section, and substituting in each case the word “notice”.

(2) Section 29 of the Public Works Amendment Act 1948 is hereby further amended—

(a) By inserting in subsection (3), after the words “may be granted or otherwise disposed of to the owner of any adjoining land”, the words “Where the land to be granted adjoins land that is settled as a joint family home under the Joint Family Homes Act 1964 and

the land to be granted is intended to be included in the land so settled, it may be granted to the settlor or settlors of the joint family home”:

- (b) By adding to subsection (3) the words “Before any land is granted or disposed of as aforesaid, the Chief Surveyor of the district shall, where he considers it necessary or expedient, assign to the whole or any part of that land a description sufficient for the purpose, and shall cause that description to be marked on the record maps”.

(3) Section 29 of the Public Works Amendment Act 1948 is hereby further amended by repealing subsection (9), and substituting the following subsections:

“(9) The recital in any notice under this section of the name and description of any person to whom any land referred to in the notice is to be granted as hereinbefore provided shall have the effect of vesting that land in the person so named for an estate in fee simple in possession, and shall be sufficient authority to the District Land Registrar of the district in which the land is situated to issue without fee to the person so named, upon registration of the aforesaid notice, a certificate of title in respect thereof.

“(9A) Notwithstanding anything in the Joint Family Homes Act 1964, the recital in any notice under this section that any person to whom subsection (9) of this section applies is the settlor of any adjoining land as a joint family home under that Act shall be deemed to be a sufficient application to the District Land Registrar to settle the additional land acquired under the notice as part of the joint family home under section 4 of the said Act, and the provisions of that Act shall apply accordingly.”

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## SCHEDULES

Section 4 (2)

### FIRST SCHEDULE

#### NEW TWELFTH SCHEDULE TO PRINCIPAL ACT

#### “TWELFTH SCHEDULE

CERTIFICATE UNDER SECTION 99 OF THE PUBLIC WORKS ACT 1928 (AS ENACTED BY SUBSECTION (1) OF SECTION 3 OF THE PUBLIC WORKS AMENDMENT ACT 1965)

Name, Occupation, and Address of person to whom land is to be granted:

Nature of estate or interest being granted:

Area and description of land to be granted in exchange or part exchange for the land taken, purchased, or acquired or for the damage done:

Amount paid or received by the Crown by way of equality of exchange:

FIRST SCHEDULE—*continued*

Date from which entitled:

Encumbrances, liens, and interests to affect land to be granted:

Reservations and restrictions to affect land to be granted, including reservations under section 8 of the Coal Mines Amendment Act 1950, where applicable:

I hereby certify that the above particulars are correct, that the land to be vested has been valued by a competent person, and that the total value  $\left\{ \begin{array}{l} \text{together with} \\ \text{less} \end{array} \right.$  the sum of £                      does not amount to more than the sum which would be paid by the Crown for the land taken, purchased, or acquired (being .....), and the damage done, if compensation for the same were made wholly in money in the usual way, and I hereby further certify that the District Land Registrar is hereby authorised to issue under the Land Transfer Act 1952 accordingly a certificate of title in form 1 in the First Schedule to that Act.

Commissioner of Works

*or*

Assistant Commissioner of Works

*or*

General Manager of Railways.”

## SECOND SCHEDULE

Section 6 (4)

## NEW THIRTEENTH SCHEDULE TO PRINCIPAL ACT

## “THIRTEENTH SCHEDULE

CERTIFICATE UNDER SECTION 151 (1) (c) OF THE PUBLIC WORKS ACT 1928 (AS ENACTED BY SUBSECTION (1) OF SECTION 5 OF THE PUBLIC WORKS AMENDMENT ACT 1965)

Name, Occupation, and Address of person to whom land occupied by stopped road is to be granted:

Nature of estate or interest being granted:

Area and description of land to be granted in exchange for the land taken, purchased, or acquired for road:

Date from which entitled:

Encumbrances, liens, and interests to affect land to be granted:

Reservations and restrictions to affect land occupied by stopped road to be exchanged, including reservations under section 8 of the Coal Mines Amendment Act 1950, where applicable:

I hereby certify that the above particulars are correct.

Chairman.”

This Act is administered in the Ministry of Works.