

PUBLIC WORKS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill provides for amendments to the Public Works Act 1928.

Clause 2 provides that drains, water races, streams, and reserves along the banks thereof shall be deemed for the purposes of the Public Works Act 1928 not to sever land so as to leave part of the land without access to a road if the other part of the land has such access and there is a permanent right of way across the drain, etc., between the two parts.

Clause 3 provides for the revision by the National Roads Board or a committee appointed by that Board of all existing warrants in respect of bridges, etc., which have been issued under section 135 or section 136 of the Public Works Act 1928. It is proposed to revoke certain of those warrants. No such warrants are to be issued in future without the consent of the National Roads Board.

Clause 4 enables local authorities, etc., to do emergency work in connection with removing, lowering, or trimming trees in cases where there is imminent danger to life or property or of interference with any public utilities, etc. Oral notice of the intention to do the work must be given where possible.

Clause 5 provides that the provisions of sections 311 to 314 and 324 and 325 of the Public Works Act 1928 shall apply to any aerial ropeway erected or proposed to be erected by or for the Minister as if it were an overhead electric line of the Minister.

Clause 6 authorises the making of regulations providing that the annual water power rental payable by Electrical Supply Authorities and other licensees holding water power licences shall be credited to the Electric Supply Account instead of to the Consolidated Fund as at present.

Clause 7 defines the term "aerodrome" as meaning, for the purposes of the Public Works legislation, an aerodrome or proposed aerodrome that is owned or controlled by the Crown or a local authority. The meaning of the term "local authority" is extended for the purposes of sections 4 to 6 of the Public Works Amendment Act 1935, which relate to the control of the use of land in the vicinity of aerodromes, so as to include as local authorities all aviation authorities within the meaning of the Local Authorities Empowering (Aviation Encouragement) Act 1929.

Clause 8 rewrites section 4 of the Public Works Amendment Act 1935, which provides for restricting the height of buildings and trees on land in the vicinity of aerodromes, so as to enable other restrictions to be imposed in respect of the use of such land. The power of control is given to the Minister in Charge of Civil Aviation instead of to the Minister of Works in certain cases, and the right of appeal is to be to the Town and Country Planning Appeal Board instead of to a Magistrate. Compensation in respect of the new provisions in respect of restriction on use is to be in accordance with section 44 of the Town and Country Planning Act 1953.

Clause 9 makes provision for the National Roads Board or a local authority to declare any existing or proposed road or street as a limited traffic road or street. Where such a declaration is made, no person shall drive any vehicle onto or from any part of the road or street, except at a motorway or at a road or street; and no person shall park or stop on the limited traffic road or street; and no person shall acquire or have any right to erect or use any building or to subdivide by reason of the limited traffic road or street. Such declarations must be made by special order, and notice must be given to all persons having any estate or interest in the adjoining lands. The notice must draw attention to the right of objection which is given by the clause, and to the right to compensation which exists under the Public Works Act 1928 where the land will be injuriously affected.

Hon. Mr Goosman

PUBLIC WORKS AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Public Works Act 1928

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 1956, and shall be read together with and deemed part of the Public Works Act 1928 (hereinafter referred to as the principal Act).

2. **Water races, etc., deemed not to sever lands**—Section one hundred and twenty-five of the principal Act is hereby amended by adding the following subsection:

“(11) For the purposes of this Act, where any piece of the land of any owner is separated from any other piece of the land of that owner by only a drain, water race, or stream, whether natural or artificial, of which the ownership or control

is vested in another person or local or public authority or the Crown, the first-mentioned piece of land shall not on that account, or on account of any reserve along the banks thereof, be deemed to be without any existing access by road, street, or private street, or to be without any frontage to an existing road, street, or private street, if that other piece of land has such access or frontage and if a permanent right of way for persons, vehicles, machinery, goods, and stock between the two pieces of land across that drain, race, stream, or reserve is held by the owner of the land and will run with the land. 5 10

3. Warrants in respect of bridges, etc.—(1) No proceedings directed towards the issue or variation of a warrant under section one hundred and thirty-five, section one hundred and thirty-six, or section one hundred and thirty-seven of the principal Act shall be commenced, continued, or completed without the consent by resolution of the National Roads Board (in this section referred to as the Board). 15

(2) As soon as practicable after the commencement of this Act, the Board shall investigate every warrant under section one hundred and thirty-five or section one hundred and thirty-six of the principal Act that is for the time being in force, and shall by resolution determine whether the warrant should continue to have effect according to its tenor or be varied or revoked. 20

(3) For the purpose of determining whether consent should be given or whether any warrant should continue or be varied or revoked under this section, the Board may either hear the parties, or require or permit the submission of written argument by all or any of them, or appoint a committee of one or more members of the Board, with or without other competent and impartial persons, to investigate the question, receive evidence, and report to the Board. 25 30

(4) Any committee constituted under this section shall at all times and in all respects be subject to the directions of the Board; but, except as expressly provided in this section, the Board and every committee established under this section may regulate its own procedure in such manner as it thinks fit. 35

(5) If any member of the Board or of a committee appointed under this section is a member of a local authority that is directly interested in any proceedings under this section he shall not sit with the Board or any committee thereof while it is deliberating upon those proceedings, nor shall he exercise any vote in those proceedings. 40

(6) The Board and every committee appointed by it under this section shall for the purposes for which it is constituted have all of the powers of a Commission of Inquiry under the Commissions of Inquiry Act 1908.

5 (7) The Board may make such order as it thinks fit with regard to all or any part of the cost of any investigation made under this section or may charge it to the National Roads Fund.

10 (8) In considering any resolution under subsection *one* or subsection *two* of this section, the Board shall have regard to the money received from the National Roads Fund by the local authority or local authorities in whose district or districts the works are or will be situated, and to the desirability of revoking or modifying every warrant which is no longer
15 reasonable.

(9) Upon hearing the parties or on reading the report of the Committee in respect of any matter arising under this section, the Board may either determine the matter forthwith or make such further investigation as the Board thinks proper.

20 (10) Any warrant under section one hundred and thirty-five or section one hundred and thirty-six of the principal Act may be revoked or varied by the Governor-General on the advice of the Minister given on the recommendation of the Board.

25 **4. Emergency work on trees**—The principal Act is hereby amended by inserting, after section one hundred and seventy-two, the following section:

30 “172A. (1) Where there is imminent danger to life or property, or of serious interference with any public utility or road or street or motorway or access way or service lane, arising from any tree, the Minister, local authority, person, or authority authorised by section one hundred and sixty-nine or section one hundred and seventy or section three hundred and twenty-four of this Act or section thirty-two of the Public
35 Works Amendment Act 1948 to remove or lower or trim a tree or part thereof may, upon giving such oral notice to the occupier as may be possible in the circumstances, enter upon the land where the tree is rooted or overhangs and there do such work in respect of the tree as is necessary and sufficient
40 to remove the danger or serious interference for a sufficient period to permit full compliance with the provisions of whichever section seems appropriate in respect of any further work that may be necessary:

“Provided that, if the authority given by this section is exceeded or any unnecessary damage is done, the work shall be deemed not to be authorised by this section.

“(2) The cost of work done under this section shall be borne and paid by the same person as would be liable for it if notice had been given under the appropriate section.” 5

5. Aerial ropeways—(1) The provisions of sections three hundred and eleven to three hundred and fourteen and sections three hundred and twenty-four and three hundred and twenty-five of the principal Act shall apply to any aerial ropeway erected or proposed to be erected by or for the Minister, in the same way as if the aerial ropeway were an overhead electric line of the Minister, and the Minister shall have and may exercise in connection with any such aerial ropeway, without any authority other than this section, all or any of the powers relating to electric lines which are or may be conferred on him by or under any of those sections. 10

(2) This section shall be deemed to be part of Part XIII of the Public Works Act 1928. 15

6. Regulations—Section three hundred and twenty-nine of the principal Act is hereby amended by inserting in subsection one, after paragraph (b), the following paragraph: 20

“(bb) Providing for the payment of any rental or annual sum into the Electric Supply Account established under the State Supply of Electrical Energy Act 1917:” 25

7. Interpretation—(1) Section two of the Public Works Amendment Act 1935 is hereby amended by adding the following subsection:

“(4) For the purposes of the principal Act and this Act the term ‘aerodrome’ means an aerodrome or proposed aerodrome that is owned or controlled by the Crown or a local authority. 30

(2) Section three of the Public Works Amendment Act 1935 is hereby amended by omitting the words “that is a body corporate and is recognised under section three”, and substituting the words “within the meaning”. 35

8. Control of use of land in vicinity of aerodromes—The Public Works Amendment Act 1935 is hereby amended by repealing section four, and substituting the following section: 40

“4. (1) Notwithstanding anything to the contrary in any unpublished, proposed, or operative regional or district planning scheme under the Town and Country Planning Act 1953, the local authority controlling an aerodrome may, with
5 the written consent of the Minister in Charge of Civil Aviation, or the Minister of Works may, by notice gazetted and publicly notified,—

“(a) Prohibit, either absolutely or beyond the height
10 specified in the notice, the erection or placing or extension without the consent of the Minister in Charge of Civil Aviation of any building, pole, mast, or other structure of any kind on the land described in the notice:

“(b) Limit the height to which trees may be grown on the
15 land described in the notice without the consent of the Minister in Charge of Civil Aviation:

“(c) Specify lands in the vicinity of the aerodrome which may be used only for such purposes as are specified in the notice in respect of those lands.

20 “(2) A copy of the notice shall be served on the owners and occupiers of the land described in the notice and on all other persons having any interest in the land so far as they can be ascertained.

“(3) Within twenty-eight days after the public notification
25 of the notice, any owner or occupier of any land described in the notice, or any other person having any interest in the land, may appeal in the prescribed manner to the Town and Country Planning Appeal Board. On the hearing of the appeal the Appeal Board, whose decision shall be final, shall decide
30 whether the notice should be confirmed, set aside, or varied. If the Appeal Board decides that the notice should be set aside it shall be deemed to be void; and if it decides that the notice should be varied the Minister of Works or the local authority issuing the notice shall amend the notice accordingly, and
35 publish the notice as so amended in the *Gazette*.

“(4) Any notice under subsection *one* of this section may at any time in like manner be revoked or varied; and where the notice is varied the provisions of subsections *two* and *three* of this section shall apply to the notice as varied:

40 Provided that no appeal under the said subsection *three* shall lie in respect of the variation of a notice to accord with a decision of the Town and Country Planning Appeal Board.

“(5) A copy of the *Gazette* containing the notice as confirmed or as varied in accordance with the decision of the

Town and Country Planning Appeal Board shall be transmitted to the District Land Registrar or the Registrar of Deeds, as the case may require, who shall, without fee, deposit the copy in his office and register against the title to all land affected thereby a memorial that the land is subject to restrictions imposed by a notice under this section as specified in the deposited *Gazette* (which shall be identified by its date and also by the deposit number, if any). 5

“(6) In the case of a notice which is registered as aforesaid, if any building, pole, mast, or other structure is erected or placed or extended, or if any such work is commenced or continued, or if any tree is allowed to grow, or if any land is used, in breach of the notice, the person for whom the work is done or who allows the tree to grow or who uses the land shall be liable to a fine not exceeding twenty pounds for every day during which the breach continues, and the Minister of Works or the local authority, as the case may be, may cause the land to be entered upon and the breach remedied, and the cost of so doing may be recovered from that person as a debt due to the Crown or the local authority, as the case may be. 10 15 20

“(7) The Minister in Charge of Civil Aviation may in any case, in his discretion, withhold his consent under paragraph (a) or paragraph (b) of subsection *one* of this section or give it unconditionally or subject to such conditions as he thinks fit. 25

“(8) Any person having any estate or interest in any land injuriously affected by the withholding of any such consent, or by the giving of consent subject to conditions, shall be entitled to compensation from the Minister of Works in any case where he served the notice, or from the local authority in any case where it served the notice; and if the compensation is not agreed upon it shall be determined as provided in the principal Act. 30

“(9) No claim for compensation in respect of any decision of the Minister in Charge of Civil Aviation under subsection *seven* of this section shall be made after the expiration of twelve months from the date of the decision. 35

“(10) Any person having any estate or interest in any land injuriously affected, by reason of the use to which the land may be put being restricted to the purposes specified in any notice that is issued under paragraph (c) of subsection *one* of this section and is duly registered, shall be entitled to claim compensation in accordance with section forty-four of the Town and Country Planning Act 1953 from the Minister of 40

Works in any case where he served the notice, or from the local authority in any case where it served the notice to the same extent and subject to the same conditions, restrictions, and limitations as if the notice were an operative district
5 scheme under the aforesaid Act and the purpose or purposes for which the land may be used as specified in the notice were a provision or provisions of such a district scheme; and for the purposes of this section the said section forty-four shall so far as it is applicable and with such modifications as are
10 necessary be deemed to be incorporated in and to form part of this section.”

9. Limited traffic roads and streets—(1) The National Roads Board or the local authority for the time being responsible for the construction of any proposed road or street,
15 or for the control of any existing road or street, may, by special order publicly notified and gazetted, declare the road or street or any part thereof to be a limited traffic road or street, as the case may be.

(2) No road or street or part thereof shall be declared to
20 be a limited traffic road or street, unless legal access to the lands adjoining it is available from some legal road or street other than a limited traffic road or street, and unless written notice of the intention to make the declaration is given to all persons having any estate or interest in the lands so far as they
25 can be ascertained not less than twenty-one days before the date on which the special order is to be confirmed. Every notice so given to any person shall draw attention to the fact that he has a right of objection under this section, and that if his land is injuriously affected by the declaration he will be
30 entitled to compensation under the principal Act.

(3) Any person having any estate or interest in any lands adjoining the road or street or part thereof intended to be declared to be a limited traffic road or street may object to the declaration. Every such declaration shall be in writing
35 signed by the objector or his agent and shall be delivered to the Board or local authority, as the case may be, not less than seven days before the date on which the special order is to be confirmed.

(4) Before any such special order is confirmed, the Board
40 or the local authority shall consider every such objection, and the objector shall be entitled to be heard in person or by his agent:

Provided that the Board or local authority may, instead of itself hearing objections, appoint a committee of its members to hear and report to it on all or any of the objections received in any case.

(5) Every limited traffic road or street shall be clearly marked at each entrance thereto by such traffic signs as may from time to time be prescribed under the Transport Act 1949. 5

(6) Every such declaration shall have the following effect:

(a) No person shall drive or move any vehicle onto or from any part of a limited traffic road or street, except at a motorway or a road or street, or shall stop or park thereon: 10

(b) No person shall acquire or have any right to erect or use a building of any kind or to subdivide any land by reason of the existence of a limited traffic road or street. 15

(7) Every person who acts in contravention of or fails to comply in any respect with any provision of this section commits an offence and shall be liable on summary conviction to a fine not exceeding ten pounds for each such offence: 20

Provided that involuntary stopping of any motor vehicle for a reasonable period through mechanical failure or accident shall be a defence, and nothing in this section shall apply to any vehicle engaged, with the authority of the Board or local authority in control of the road or street, in the making or repair or other work on the road or street. 25

(8) The following provisions shall apply in respect of every special order under this section:

(a) Every such special order shall refer to a plan showing the road or street or the proposed road or street or the part thereof, and the ownership and boundaries and all road and street frontages of each parcel of land adjoining the road or street or proposed road or street or the part thereof: 30

(b) A copy of every such special order and plan certified in each case as correct by a responsible officer of the Board or local authority shall be deposited in the office of the District Land Registrar of the district in which the land is situated, and a memorial stating the general effect of the special order shall be endorsed upon the title to each parcel of land adjoining the road or street or proposed road or street or the part thereof to which the special order refers. 35 40

(9) In this section the term "special order" means—

(a) In relation to any local authority, such an order made in accordance with the provisions of any Act in force by virtue of which the local authority can make a special order:

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(b) In relation to the National Roads Board, a resolution passed by the Board at a special meeting convened for the purpose and confirmed at a subsequent meeting (either ordinary or special) held not sooner than the twenty-eighth day and not later than the forty-second day after the date of the special meeting, public notice of the place, time, and date of that subsequent meeting and of the purport of the resolution having been given in some newspaper circulating in the district in which the road or street or the proposed road or street is situated twice during the period of twenty-eight days immediately preceding the date of the subsequent meeting, with an interval of not less than fourteen days between the two notifications.

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