

Auckland Waste Lands Act 1870

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An Act to amend “The Auckland Waste Lands Act 1867.”

Preamble.

WHEREAS it is expedient to encourage the *bona fide* settlement of the Waste Lands of the Crown in the Province of Auckland

Be it therefore enacted by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

1 Short Title.

The Short Title of this Act shall be “The Auckland Waste Lands Act 1870.”

2 Land may be thrown open for *bona fide* occupation.

It shall be lawful for the Superintendent of the Province of Auckland by Proclamation in the Provincial Government *Gazette* to declare from time to time the whole or any part of the Waste Lands of the Crown within the said Province to be open for *bona fide* occupation in manner and under the conditions hereinafter mentioned and by Proclamation to alter or revoke such declaration.

3 Must first be trigonometrically surveyed.

No lands shall be so proclaimed open for occupation until they have been first trigonometrically surveyed main lines of road laid off and trigonometrical stations erected.

4 Persons may take possession and hold by virtue of actual occupation.

Upon any lands being so proclaimed open for occupation it shall be lawful for any person or persons to take possession of and hold subject to such regulations as may be made in that behalf in accordance with the Laws relating to the Waste Lands of the said Province for the time being in force and to the conditions hereinafter mentioned by virtue of actual occupation forty acres of such lands in respect of each person of eighteen years of age or upwards so occupying Provided that not more than two hundred acres can be held or occupied by any number of persons living together in one household.

5 Occupant must survey and lodge application within six months.

Any person or persons taking possession of and occupying such land as aforesaid shall within six months after so taking possession lodge with the Waste Lands Commissioner of the Province of Auckland an application for the said land together with a plan thereof prepared by an approved surveyor in conformity with the regulations which may from time to time be prescribed by the Superintendent in respect of such surveys in which application shall be stated the name or names of the person or persons in respect of whose occupation such land is applied for the date of the commencement of their occupation and the name or names of the person or persons in whose favour the land is desired to be granted.

6 Application to be recorded and certificate granted.

On receipt of such application and correct plan the Waste Lands Commissioner shall cause the same to be recorded on a Record Map of the District and shall give to the applicant a certificate in the form A hereunto annexed.

7 Three years' occupation and cultivation of one-fifth entitles to Crown Grant.

At the expiration of three years from the date of commencement of occupation the person in whose favour the land was applied for shall be entitled to a Crown Grant or Conveyance of the said land on his proving to the satisfaction of the Waste Lands Commissioner that the persons named in the original application or other adults as substitutes for them have during the whole of the previous three years been in the *bona fide* occupation of the said land by continuous residence thereon and that at least one fifth part thereof is then under cultivation and on payment of the usual costs of a Crown Grant or Conveyance.

8 Complete cultivation entitles to grant before the expiration of three years.

The person in whose favour the land was applied for shall be entitled to a Crown Grant or Conveyance thereof at any time prior to the expiration of the aforesaid three years on proof to the satisfaction of the Waste Lands Commissioner that the whole land so applied for is fenced and cultivated and

a dwelling-house erected thereon and on payment of the costs of the Crown Grant or Conveyance.

9 Certificate transferable after one year's occupation.

Such certificate as aforesaid may after one year's occupation thereunder be transferred to any other person or persons by indorsement in the form B hereunto annexed and such transferee shall have the same rights privileges and liabilities as the original holder of the certificate.

10 Certificate void on ceasing to occupy.

If the original occupants or their substitutes shall cease to be in the *bona fide* occupation of the land such certificate shall become null and void and all rights and privileges thereunder shall absolutely cease and determine.

11 Disputed questions to be determined by Justices.

If any question shall at any time arise as to whether any person or persons have continued or ceased to be in the *bona fide* occupation of the land or otherwise fulfilled the before-mentioned conditions such question shall be referred by the Waste Lands Commissioner to two or more Justices of the Peace and the decision of such Justices shall be final and conclusive and not liable to be questioned in any Court of Law on any ground whatever.

12 Provision for partial failure in occupation.

If some portion of the original occupants shall fail by themselves or their substitutes to continue in *bona fide* occupation of the land originally taken up such failure shall not prejudice the right of the persons continuing in occupation to their proportion of the land applied for and in such case the Waste Lands Commissioner shall fix and determine what portion of the original application shall be cut off and deducted but so as not to cut off any buildings or cultivation of the occupants.

13 Roads may be taken by Highway Boards with consent of Superintendent.

All such lands whether before or after being granted and all lands hereafter sold or otherwise disposed of by the Crown in the Province of Auckland shall be subject to the right of the Highway Board of the District with the consent of the Superintendent to take any public road or roads through the said lands without compensation provided that not more than five per cent, of the land shall be taken and no road shall be taken through any cultivated land without compensation being made by the Board to the occupant for the injury to the crop nor shall be taken through any garden or within thirty feet of any buildings without consent of the occupants and the Highway Board taking any such road through lands already fenced and cultivated shall be bound to fence the same on each side with a substantial fence.

14 Provision in case of death of holder of certificate.

In the event of death before grant of any person or persons in whose favour such certificate as aforesaid shall have been issued all rights and privileges thereunder shall pass to his or their appointee in writing and failing such appointment shall pass to the personal representatives of the deceased person or persons and failing such representatives to the person or persons in actual occupation of such lands and failing such occupation such land shall revert to the Crown.

15 Crown Grant must be applied for within one year after expiry of three years.

Any person or persons in whose favour such certificate shall have been granted shall within one year after the termination of the aforesaid three years' occupancy apply for a Crown Grant of the said land otherwise he or they shall forfeit all right thereto except to such part thereof as shall then be built upon or in actual cultivation.

16 Lands may be reserved or sold prior to occupation.

Nothing herein contained shall be held to interfere with the reservation selection and sale under "The Auckland Waste Lands Act 1867" of lands declared open for occupation prior to the actual occupation thereof.

17 Repeal of Land Order clauses.

Sections twenty-one to twenty-nine inclusive of "The Auckland Waste Lands Act 1867" are hereby repealed saving nevertheless to all persons any rights already acquired thereunder.

18 Power to lease the right of flax-cutting.

It shall be lawful for the Waste Lands Commissioner with consent of the Superintendent to lease by public tender the right to cut flax on any Waste Lands of the Crown for a term not exceeding seven years such right being determinable at any time at three months' notice on the land being required for the purposes of sale or *bona fide* occupation as hereinbefore mentioned.

19 Power to lease right of cutting kauri timber for sale.

It shall be lawful for the Waste Lands Commissioner with consent of the Superintendent to lease by public tender the right to cut kauri timber for the purpose of sale on any Waste Lands of the Crown for a term not exceeding seven years and to erect saw mills and machinery thereon with right of removal thereof reserving nevertheless to the Crown the right of sale or disposal of the land subject to such lease and the right to sell or lease any products other than the kauri timber thereon.

20 Power to grant water-rights.

It shall be lawful for the Governor on the recommendation of the Waste Lands Commissioner and the Superintendent to make and from time to time on such recommendations as aforesaid to rescind or alter regulations for granting to any person the right to form any dam reservoir lead or flume and any embankment in connection therewith in through or over any Crown Lands or in through or over the lands belonging to the applicant and for taking diverting or using the water of any stream for the purpose of such dam reservoir lead or flume subject to such conditions as to the repairs of such dams reservoirs leads flumes and embankments and the use of such water-rights and such other conditions and upon payment of such rents or fees as may be specified in such Regulations and the Governor may make grants in accordance with such Regulations provided such taking use or diversion shall not interfere with any use to which any other proprietor on the said stream had previously lawfully applied the water of said stream.

21 Notice to be given before granting water-rights and objections how to be decided.

Upon any application being made for a water-right as aforesaid such application shall be publicly notified in each Provincial Government *Gazette* for two months prior to the recommendation of the grant and any person objecting thereto shall be entitled to have such objection referred by the Superintendent to the Waste Lands Commissioner and two Justices of the Peace and the decision of the Commissioner and such two Justices shall be final provided they are unanimous otherwise no recommendation shall be made.

22 Provision for sale and conveyance of land held by the Superintendent.

All lands heretofore or hereafter acquired or held by the Superintendent for the use of the Province under an absolute conveyance shall be sold or otherwise disposed of under the Waste Lands Laws of the Province for the time being in force or otherwise as may be prescribed by any Act or Ordinance of the Superintendent and Provincial Council and when so sold and disposed of may be conveyed by the Superintendent to the purchaser by deed under his hand and the Seal of the Province.

23 Resident occupiers may depasture on Waste Lands.

The resident occupiers of land within any Highway District shall be entitled to depasture on the Waste Lands of the Crown within such District such number and description of great cattle in proportion to their several holdings as the Trustees for the District shall prescribe on payment to the trustees of such annual fee not exceeding two shillings and sixpence per head of such cattle over six months old as the trustees shall fix.

24 Penalty for illegally depasturing.

Any person not being an occupier of land who shall depasture or permit to depasture any cattle upon the Waste Lands of the Crown within any Highway District or who being an occupier shall depasture or permit to depasture any cattle prohibited by the Trustees or a greater number than prescribed or without payment of the fees fixed shall be liable to have such cattle impounded as for a trespass.

25 No liability for trespass on unfenced land.

No person depasturing cattle under section twenty-four of this Act shall be liable for any trespass by such cattle on any land within such District unless such land shall in the opinion of the Trustees of the District be sufficiently fenced.

26 Application of fees and penalties.

All fees received under section twenty-four shall be applied to local improvements within the District.

27 Waste Lands Commissioner and Crown Land Commissioner to mean same thing.

The term "Waste Lands Commissioner." when used in this Act "The Auckland Waste Lands Act 1867" or "The Auckland Waste Lands Act 1867 Amendment Act 1869" shall be held and taken to mean the Commissioner of Crown Lands for the Province or his deputy.

28 Interpretation.

This Act together with "The Auckland Waste Lands Act 1867" and "The Auckland Waste Lands Act 1867 Amendment Act 1869" shall be taken and read as one Act.

A.
Occupation Certificate

Allotment No. Section No.

Parish of County of Province of Auckland.

Acres.

A.B., C.D., E.P., and G.H., or their substitutes, are hereby authorized to occupy the above-mentioned land for three years from the day of 187 in pursuance of "The Auckland Waste Lands Act, 1870." The grant or conveyance to be issued to X.T. and P.Q.

D.M.,

Waste Lands Commissioner.

Conditions to entitle to Crown Grant or Conveyance.

1. Complete cultivation, on which Crown Grant or Conveyance will be given on payment of the cost of grant or conveyance.
2. The above three years' *bona fide* occupation by continuous residence and cultivation of at least one-fifth part thereof, and payment as above.

Note.—1. The above certificate is transferable in the annexed form.

2. If the land is at any time left unoccupied, this certificate becomes void.
3. If insufficiently occupied, a portion will be cut off and forfeited.
4. The person who may be entitled to the grant of the above land may provide for the event of his death by an appointment as follows, indorsed hereon:—"In the event of my death before becoming entitled to a grant of the above land, I appoint V.P. to become entitled to all rights and privileges thereunder."

Witness:

(Signature.)

(Signature.)

5. The Crown Grant or Conveyance must be applied for within one year after the expiry of the above three years, or the rights hereunder are forfeited.

B.

I [*or we*] the above [*or within*] named X.Y. [and P.Q.] do hereby transfer all my [*or our*] right and interest under the above [*within or annexed*] Certificate to O.N., of

.

Witness:

(Signature.)

(Signature.)