

Public Works Amendment Act 1948

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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, 1948, and shall be read together with and deemed part of the Public Works Act, 1928 (hereinafter referred to as the principal Act).

Part I

Access-ways and Service-lanes

2 Interpretation.

1940, No. 14 1946, No. 23

- (1) For the purposes of this Part of this Act, unless the context otherwise requires,—

“Access-way” means an access-way declared as such by the Governor-General by Order in Council or by a Borough Council or Town Board by resolution under this Part of this Act; and includes an access-way lawfully created under any other Act except the Housing Amendment Act, 1940, and the Land Sub-division in Counties Act, 1946:

“Controlling authority” means the authority entitled to control an access-way or service-lane in accordance with section six of this Act, and in the case of a proposed access-way or service-lane means the authority which would be so entitled to control it if it were an access-way or service-lane:

“Reserve” means a public reserve within the meaning of the principal Act; and includes the sea and any river or lake; and also, with the written consent of the authority in control of the site thereof, includes any public utility or public building:

“Service-lane” means a service-lane declared as such by the Governor-General by Order in Council or by a Borough Council or Town Board by resolution under this Part of this Act, and includes a service-lane lawfully created under any other Act:

“Subdivision” includes any transfer, assignment, devise, letting, subletting, or other parting with ownership or possession (whether or not for any definite period) of any part of any piece of land or of any part of any building by a person who in either case retains or also disposes of an adjoining part:

“Town Board” means the Board of a town district:

“Town district” means a town district established under the Town Boards Act, 1908, which does not form part of any county.

- (2) Every reference in this Part of this Act to an access-way or a service-lane shall, unless the context otherwise requires, include every bridge, culvert, kerb, drain, channel, crossing, fence, barricade, or other thing belonging thereto, or lying upon the line or within the limits thereof.

1940, No. 14 1946, No. 23

- (3) This Part of this Act shall not apply to any access-way created under the Housing Amendment Act, 1940, or the Land Subdivision in Counties Act, 1946, unless it is declared an access-way under section three of this Act.
- (4) Any consent or approval given under this Part of this Act may be given upon or subject to such conditions as the consenting party thinks fit, and any such consent or approval or conditions may from time to time be varied, revoked, or added to by the consenting party.

3 Declaration of access-ways and service-lanes.

- (1) Where, for the purpose of providing the public with a shorter route for pedestrians from any road, street, or reserve to any road, street, or reserve, any way is laid down and constructed outside a borough or town district (in accordance with the provisions of this Part of this Act relating to access-ways) on land which at the date of the Order in Council is owned by His Majesty, the Governor-General may, by Order in Council, declare that way or land to be an access-way for the purposes of this Part of this Act.
- (2) Where, for the purpose of providing the public with a shorter route for pedestrians from any road, street, or reserve, to any road, street, or reserve, any way is laid out and constructed within a borough or town district (in accordance with the provisions of this Part of this Act relating to access-ways) on land which at the date of the resolution is owned by the Corporation of the borough or town district, as the case may be, the Council or Town Board may, by

resolution, declare that way or land to be an access-way for the purposes of this Part of this Act.

- (3) Where, for the purpose of providing the public with side or rear access for vehicular traffic to any land, any lane is laid out and constructed outside a borough or town district (in accordance with the provisions of this Part of this Act relating to service-lanes) on land which at the date of the Order in Council is owned by His Majesty, the Governor-General may, by Order in Council, declare that lane or land to be a service-lane for the purposes of this Part of this Act.
- (4) Where, for the purpose of providing the public with side or rear access for vehicular traffic to any land, any lane is laid out and constructed within a borough or town district (in accordance with the provisions of this Part of this Act relating to service-lanes) on land which at the date of the resolution is owned by the Corporation of the borough or town district, as the case may be, the Council or Town Board may, by resolution, declare that lane or land to be a service-lane for the purposes of this Part of this Act.

4 Construction of access-ways and service-lanes.

- (1) The Minister may from time to time lay out and construct proposed access-ways and service-lanes outside a borough or town district on land belonging to the Crown, and may from time to time authorize the owner of any land to lay out and construct any proposed access-way or service-lane on land outside a borough belonging to that owner.
- (2) Any Borough Council or Town Board may from time to time lay out and construct proposed access-ways and service-lanes within the borough or town district, as the case may be, on land belonging to the Corporation of the borough or town district, and may from time to time authorize the owner of any land to lay out and construct any proposed access-way or service-lane within the borough or town district on land belonging to him.
- (3) Where pursuant to an authorization by the Minister or by a Borough Council or Town Board the owner of any land proceeds to lay out and construct a proposed access-way or service-lane as hereinbefore provided, he shall form and completely construct the same to the satisfaction of the controlling authority, and shall transfer the proposed access-way or service-lane to His Majesty, or to the Corporation of the borough or town district, as the case may be, by instrument in writing, which shall be deposited for registration in the office of the District Land Registrar or, as the case may require, of the Registrar of Deeds, and the Registrar shall refuse to register any such instrument as aforesaid unless he is satisfied that the requirements of this section have been complied with.

5 Power to take land for access-ways and service-lanes.

In every case where by statute or other lawful authority the Minister or any Borough Council or Town Board is empowered to take, purchase, accept dedication of, or otherwise acquire any land for a road or street, that authority shall be deemed to include power to take, purchase, accept dedication of, or otherwise acquire land for an access-way or service-lane.

6 Control and management of access-ways and service-lanes.

The control and management of every access-way and service-lane shall vest in the authority which would be entitled to control it if it were a road or street, and subject to this Part of this Act that authority shall have power to alter, repair, light, and maintain it as if it were a road or street.

7 Provisions affecting access-ways and service-lanes.

- (1) No person shall acquire any right to erect a building by reason of the existence of any access-way or service-lane.

1933, No. 30

- (2) No local authority shall authorize any person to erect a building on any site adjoining any access-way or service-lane unless the site has such frontage to a road, or a street, private street, or duly authorized private way within the meaning of the Municipal Corporations Act, 1933, other than an access-way or service-lane, as may be required by any statute, regulation, or by-law for the time being in force and applying thereto.
- (3) No person shall make any fresh subdivision of any land or building adjoining any access-way or service-lane unless the interest, if any, retained by the person making the subdivision, and each interest with which he is parting, has such frontage or access to a road, street, or private street, other than an access-way or service-lane, as may be required by any Act, regulation, or by-law for the time being in force and applying thereto.
- (4) No person shall be entitled to require from the Crown or any Borough Council or Town Board any contribution under the Fencing Act, 1908, by reason of the ownership or control of any access-way or service-lane by the Crown or the Corporation of the borough or town district.
- (5) Every access-way and service-lane may be given a distinctive name as if it were a road or street, and in such cases the word "way" or "lane", as the case may require, shall be substituted for the word "road" or "street".
- (6) Any access-way or service-lane may be permanently stopped or closed as if it were a road or street under the provisions of any Act for the time being in force relating to the stopping or closing of roads or streets, but access-ways and service-lanes shall not be permanently stopped or closed under any other circumstances.

1933, No. 30

- (7) Every access-way and service-lane within a borough or town district shall be deemed to be a street for the purposes of section three hundred and thirty-two of the Municipal Corporations Act, 1933.
- (8) Except as provided in this Part of this Act, nothing in this Part of this Act shall be deemed to constitute an access-way or service-lane a road or street.

8 Provisions affecting access-ways.

- (1) Access-ways shall be used by pedestrians only.
- (2) Unless the Governor-General by Order in Council in any case otherwise directs, every access-way shall be of a width of not less than four feet six inches and not more than twelve feet measured at right angles to its course:
Provided that this subsection shall not apply to any access-way lawfully constructed under any other Act.
- (3) A controlling authority may lay out grass plots and flower-beds on any access-way under its control, and may prohibit traffic to such extent as it thinks fit on any such plots or beds, whether they are laid out before or after the commencement of this Act.
- (4) No person shall have direct access to any accessway from any adjoining private lands or from any building thereon except with the prior consent in writing of the controlling authority:
Provided that every right of access to an access-way existing when this Act first applies thereto shall be deemed to be duly authorized under this Act.
- (5) Unless a controlling authority in any case otherwise determines, the entrances to every access-way shall be so fenced or barricaded that cattle or vehicles cannot enter thereon.

1933, No. 30

- (6) An access-way within a borough or town district shall be deemed to be a street for the purposes of section two hundred and six of the Municipal Corporations Act, 1933.

9 Provisions affecting service-lanes.

- (1) Unless the Governor-General by Order in Council in any case otherwise directs, every service-lane shall be of a width of not less than twelve feet and not more than thirty-five feet measured at right angles to its course:
Provided that a service-lane may be of any greater width for a distance of not more than twenty feet from where it meets any road or street:
Provided also that any service-lane which has a blind end may have a turning space of any width at that end:
Provided further that this subsection shall not apply to any service-lane lawfully created under any other Act.

- (2) Except with the prior consent in writing of the Minister, no service-lane shall be laid out or constructed with a steeper grade in any part of its length than one inch in twelve inches.

1933, No. 30

- (3) Except as provided in this section, every service-lane within a borough or town district shall be included in the term "street" as defined in section one hundred and seventy-four of the Municipal Corporations Act, 1933, and the provisions of that Act relating to streets shall apply to every service-lane within a borough or town district:

Provided that subsections three and six of section one hundred and seventy-five, and sections one hundred and ninety, and one hundred and ninety-two of that Act shall not apply to any service-lane within a borough or town district.

- (4) A service-lane shall not be deemed to be a road or street for the purposes of sections one hundred and twenty-five and one hundred and twenty-eight of the principal Act.
- (5) Section one hundred and ninety-six of the Municipal Corporations Act, 1933, shall apply, with the necessary modifications, to every service-lane in a borough or town district as if the creation of a service-lane were the widening of a street.

10 Mayors and Councillors personally liable for consent to unlawful acts.

- (1) Every Mayor or Councillor of a borough, every Chairman or Councillor of a county, and every Chairman or member of a Road Board or Town Board who consents to any unlawful act in relation to any access-way or service-lane, shall for each offence be liable on summary conviction to a fine not exceeding fifty pounds:

Provided that it shall be a good defence in any proceedings under this section if the defendant proves that in so consenting he acted in good faith and in accordance with the written advice of the solicitor of the local authority:

Provided also that no proceedings shall be commenced under this section more than two years after the offence was committed.

- (2) It shall be the duty of the Attorney-General to take proceedings under this section.
- (3) It shall also be the duty of the Attorney-General to institute such proceedings as may be necessary or expedient for preventing the laying-out or construction or proposed laying-out or construction of any access-way or service-lane of a greater or less width than that required by law, or any other unlawful act in relation to any access-way or service-lane.

11 Penalty for unlawful acts.

- (1) In addition to any other penalties for which he may be liable, every person who is a party to any subdivision in breach of the provisions of subsection three

of section seven of this Act, and every person who makes or maintains any direct access to an access-way in breach of the provisions of subsection four of section eight of this Act, commits an offence and shall be liable on summary conviction to a fine not exceeding five pounds for every day or part of a day during which the subdivision or direct access continues.

- (2) Every person who rides any bicycle or animal on an access-way, or drives or allows any horse or cattle to go on an access-way, or drives any vehicle on an access-way, commits an offence and shall be liable on summary conviction to a fine not exceeding ten pounds.

12 Repeals.

The enactments specified in the First Schedule to this Act are hereby repealed.

Part II Miscellaneous

13 Execution of contracts for Government works, &c.

1935, No. 27

- (1) Section nine of the principal Act is hereby amended by repealing subsection one, as amended by section thirteen of the Public Works Amendment Act, 1935, and substituting the following subsection:—

“(1) Every contract for the execution of Government works or in any way connected with Government works, and every deed or other instrument relating to land or any estate or interest in land acquired or to be acquired under this Act, shall, unless otherwise expressly provided in this or any other enactment, be entered into in the name of His Majesty, and may, notwithstanding anything to the contrary in any other Act, be executed on his behalf by the Minister, or by any person authorized by the Minister in that behalf, either generally or in respect of any specified contract or instrument or of any specified class or classes of contracts or instruments.”

Repeal.

- (2) Section thirteen of the Public Works Amendment Act, 1935, is hereby repealed.

14 Lands not to be taken without consent.

Section eighteen of the principal Act is hereby amended by inserting, after the word “yard” in paragraph (b), the words “cemetery, burial-ground.”

15 Survey not required in certain cases.

- (1) For the purposes of sections twenty-two, twenty-three, twenty-eight, thirty-five, two hundred and sixteen, and two hundred and fifty-four of the principal Act—

- (a) Where it is proposed to deal with the whole of the land comprised in any certificate of title issued under the Land Transfer Act, 1915, and not limited as to parcels, the description in the certificate of title of the land shall be deemed to be a sufficient identification of the land:
 - (b) Where it is proposed to deal with land previously dealt with and separately described in any Proclamation or Order in Council issued, or deemed to have been issued, under any of the said sections, the description there used shall be deemed to be a sufficient identification of the land:
 - (c) Where it is proposed to deal with the whole of the land comprised in a separate lot or other surveyed subdivision which is shown on a plan deposited in a Land Registry Office in accordance with the provisions of the Land Transfer Act, 1915, it shall be sufficient to identify the land by reference to the lot or subdivision on the deposited plan.
- (2) In any such case no fresh survey or plan or certified map shall be necessary under any of the said sections of the principal Act for the purposes of any notice, recommendation, memorial, Proclamation, Order in Council, certificate, or warrant.
 - (3) Nothing in this section shall be deemed to derogate from the provisions of section one hundred and seventy-eight of the Land Transfer Act, 1915.

Repeal. 1945, No. 45

- (4) This section is in substitution for section thirty-one of the Finance Act (No. 2), 1945, and that section is hereby accordingly repealed.

16 Agreements to lease lands for public works.

- (1) Section thirty-two of the principal Act is hereby amended by inserting in subsection one, after the words “purchase any such estate or interest,” the words “or to take on lease any land,”.

Repeal.

- (2) The said section thirty-two of the principal Act is hereby further amended by repealing subsection three, and substituting the following subsection:—

“(3) In any such case—

“(a) The compensation or purchase-money, if payable by the Minister, shall be paid out of moneys appropriated by Parliament for the works in respect of which the land is taken or purchased, or, if payable by a local authority, shall be paid out of the ordinary funds of the local authority available for the purpose:

“(b) The rent, if payable by the Minister, shall be paid out of moneys appropriated by Parliament for the purpose, or, if payable by a local authority, shall be paid out of the ordinary funds of the local authority available for the purpose:

“(c) Neither the Minister nor any member of a local authority shall be personally liable for any compensation, purchase-money, or rent which may become payable under this Act.”

17 Compensation certificates.

- (1) In any case where the Minister or any local authority has entered into an agreement under section thirty-two of the principal Act, or for the payment of compensation for damaging or injuriously affecting any land, or for the temporary occupation of any land, the Minister or local authority may forward a compensation certificate in accordance with this section to the District Land Registrar or Registrar of Deeds, as the case may require, who shall, without fee, deposit the same in his office and register against the title to all land affected thereby a memorial referring by number or symbol to the compensation certificate and setting out the day and hour when the compensation certificate is registered.
- (2) Every compensation certificate under this section shall set out—
 - (a) The description of the land affected by the certificate:
 - (b) Brief particulars of the agreement which the Minister or local authority has entered into in respect of the land:
 - (c) The name and the address (if any) mentioned in the agreement of each person, other than the Minister or local authority who is a party to the agreement:
 - (d) The place where, and the hours during which, a copy of the agreement may be inspected, and a reference by which the agreement may be identified.
- (3) Notwithstanding anything contained in this section, where the land affected by an agreement comprises or includes part of the land in a certificate of title, but the part is not accurately defined in the agreement, a compensation certificate in respect of the agreement may be registered against the whole of the land in the certificate of title, and it shall not be necessary for the purpose of registering the compensation certificate to define accurately the land affected by the agreement.
- (4) The validity of a compensation certificate shall not be affected by any misdescription therein of the land if sufficient information appears on the face of the compensation certificate to enable the District Land Registrar or Registrar of Deeds, as the case may be, to satisfy himself of the identity of the land intended to be affected.
- (5) Registration of a compensation certificate shall affect with notice of the agreement to which it refers all persons having any estate or interest in the land comprised in the titles against which the compensation certificate is registered, and in mortgages and charges of that land, and in rights, easements, and

appurtenances belonging to that land, or therewith usually held and enjoyed, and their successors in title.

- (6) Every person who applies at the place and within the hours specified in a compensation certificate for permission to inspect the copy of the agreement shall be shown the copy and any plan relating thereto, and, if the agreement requires payment of any money or the vesting of any land, shall if he so requests be advised as soon as possible of the extent to which the agreement has been performed.
- (7) Where the Minister or local authority is satisfied that any land against which a compensation certificate is registered is not affected by the agreement to which the compensation certificate refers, or in any other case as soon as all the requirements of the agreement have been performed or otherwise discharged so far as they affect any piece of land and that piece of land has ceased to be injuriously affected by the agreement and by any act done under the agreement, the Minister or local authority may forward a certificate to that effect to the District Land Registrar or Registrar of Deeds, as the case may require, who shall, without fee, deposit the same in his office and write against the memorial registered as aforesaid the word "Discharged", with his signature and the date.
- (8) Every compensation certificate, and every certificate under the last preceding subsection, shall be signed by the Minister or by some person authorized by the Minister in that behalf or, in the case of a local authority, shall be executed by the local authority as if it were a deed.

18 Power to take licences, &c., with land.

Where any land or any estate or interest in land is taken for a public work, any licence, permit, right, privilege, or authority in respect of the premises may be taken by the same or a subsequent Proclamation; and from and after a day to be named in the said Proclamation the licence, permit, right, privilege, or authority shall vest in His Majesty discharged from all mortgages, charges, claims, liens, bills of sale, and interests of what kind soever. The provisions of the principal Act shall, so far as they are applicable and with the necessary modifications, apply in every such case as if the licence, permit, right, privilege, or authority were an interest in land.

19 Disposal of licences acquired by His Majesty.

- (1) In any case where a freehold or leasehold interest in premises in respect of which a licence under the Licensing Act, 1908, is in force, has been acquired by or on behalf of His Majesty (whether before or after the passing of this Act) for a public work, and the equitable right to the licence has been purchased by or on behalf of His Majesty, or the licence has been taken under the last preceding section, the following provisions shall apply:—
 - (a) The person in possession of the licence shall deliver it to the Minister within seven days after service on him of a notice in writing signed by

the Minister requiring him to do so; and if he fails to do so he commits an offence and shall be liable on summary conviction to a fine not exceeding fifty pounds:

- (b) The Licensing Committee, on an application made by the Minister as if he were the holder of the licence, may transfer the licence to a person nominated by the Minister, or shall if the Minister so requires transfer the licence to the Minister:
 - (c) If, after seven days from the service of a notice on the person in possession of the licence in accordance with paragraph (a) of this subsection, the Minister has not received the licence and is therefore unable to produce it for the purposes of any such transfer, the Licensing Committee shall declare the original licence to be void, and shall issue to the Minister a duplicate thereof which shall have the same force as the original licence previously had.
- (2) In any case in which this section applies, while the premises continue to be owned or held upon lease by His Majesty or by any person on his behalf, and while the licence remains in force in respect of the premises—
- (a) It shall not be lawful for the Licensing Committee to grant a transfer of the licence or a new licence in place of the licence in respect of the premises except with the prior consent in writing of the Minister:
 - (b) The Minister may exercise on behalf of His Majesty all rights and powers conferred on an owner of licensed premises:
 - (c) If the premises cease to be available for use as licensed premises, the Minister of Justice may issue a certificate declaring that the licence shall be suspended. The certificate shall be forwarded to the Clerk of the Licensing Committee of the licensing district within which the premises are situated. The certificate shall take effect from the date thereof, or from such other date (whether before or after the date of the certificate) as may be specified therein in that behalf, and shall remain in force until revoked by the Minister of Justice:
 - (d) So long as any certificate under this subsection remains in force the licence shall be suspended and the provisions of the Licensing Act, 1908, relating to licences and licensed premises shall not apply in relation to the licence or to the premises in respect of which the licence was granted:

Provided that the Licensing Committee shall have power to grant an application for the removal of the licence to other premises and from time to time to grant a transfer of the licence, and for those purposes the provisions of the Licensing Act, 1908, relating to removals and transfers of licences shall, subject to the provisions of this section and with the necessary modifications, apply, except that it shall not be necessary for a notice of any application for the removal or transfer of the licence to be

affixed on the outer side, or front, of the principal entrance door of the premises:

- (e) When any certificate issued by the Minister of Justice under this section is revoked the licence shall thereupon become of full validity and effect, and the provisions of the Licensing Act, 1908, relating to licences and to licensed premises shall thereafter, subject to the provisions of this Act, apply in relation to the licence and to the premises in respect of which the licence was granted.
- (3) In any case where a freehold or leasehold interest in premises in respect of which a licence under the Licensing Act, 1908, is in force has been acquired by or on behalf of His Majesty (whether before or after the passing of this Act), the holder of the licence may, with the approval of the Minister of Justice, and subject to such conditions as he may impose, apply for the removal of the licence to other premises in any licensing district, and in any such case the provisions of subsection four of section one hundred and twenty-seven of the Licensing Act, 1908, shall not apply.

20 Amalgamation of Public Works Department with Ministry of Works.

- (1) All references to the Public Works Department, or to the Engineer-in-Chief, or Under-Secretary, or Permanent Head, or other officer of the Public Works Department in the principal Act, or in any other regulation, Ordinance, order, or other enactment, or in any contract, agreement, deed, instrument, application, licence, notice, or other document whatsoever shall, unless inconsistent with the context, be read hereafter as references to the Ministry of Works, or to the corresponding officer of the Ministry of Works, as the case may be.

Repeal.

- (2) Section fifty-one of the principal Act is hereby amended by repealing paragraphs (a) and (b) of subsection two, and substituting the following paragraphs—

“(a) Where the Minister of Works is the respondent, by being sent by registered letter addressed to the Permanent Head of the Ministry of Works at the Ministry of Works Office at Wellington or by being delivered at the office of the Solicitor to the Ministry of Works:

“(b) Where the Minister of Railways is the respondent, by being sent by registered letter addressed to the General Manager of Railways at the Government Railways Office at Wellington, or by being delivered at that office.”

21 Section 81 of principal Act (as to claimant’s acts making execution of work more costly) amended.

- (1) Section eighty-one of the principal Act is hereby amended by omitting from subsection one the words “date prescribed in subsection two hereof”, and substituting the words “specified date”.

Repeal.

- (2) The said section eighty-one of the principal Act is hereby further amended by repealing subsection two, and substituting the following subsections:—

“(2) Where any such claimant has at any time after the specified date done anything upon or under the land with the effect of rendering the execution of the work more difficult or costly he shall be presumed to have done so with that purpose unless he proves that in so doing he took reasonable precautions to avoid that effect.

1944, No. 31

- “(3) For the purposes of this section the term ‘the specified date’ means, in the case of land which is subject to a notice in respect of a comprehensive public work or scheme of development or reconstruction under section twenty-nine of the Finance Act (No. 3), 1944, which has remained continuously in force since the first publication of the notice, the date of that publication, and, where no such notice under that section is in force,—

“(a) In the case of land taken for a public work pursuant to sections twenty-two and twenty-three of this Act, means the date of the first publication of the notice referred to in paragraph (c) of subsection one of the said section twenty-two:

“(b) In the case of land taken for a road, railway, motor-way, or other public work where the middle-line of the work or of the land proposed to be taken has been defined by Proclamation, means the date of that Proclamation, or five years before the date of entry on the land for the construction of the road, railway, motor-way, or other public work, whichever is the later:

“(c) In the case of land taken for any other public work, means the date of the Proclamation or Order in Council taking the land.”

*Roads and Streets***22 Controlling authorities of roads may construct dividing strips, &c.***1947. No. 46*

Notwithstanding anything to the contrary in any Act or rule of law, but subject to the provisions of section six of the Public Works Amendment Act, 1947, it shall be lawful and shall be deemed always to have been lawful for the authority having control of any motor-way, highway, road, street, or way over which the public may pass or to which the public has access, to construct, erect, dig, or grow thereon, or remove therefrom, such barriers, dividing strips, guiding or sign posts, pillars, or other markers, trees, hedges, lawns, gardens, and other devices as may in the opinion of the authority be necessary or desirable for separating, guiding, or warning traffic, intercepting glare, or any other purpose.

23 Local authorities may construct cycle-tracks, footpaths, &c., on highways.

Notwithstanding that the control of a highway may be vested in the Main Highways Board, any local authority through whose district a highway or part thereof may pass is hereby authorized, out of moneys available for road or street construction within its district, to construct and maintain on the highway within its district, cycle-tracks, footpaths, kerbs, water-tables, and other facilities for pedestrian and cycle traffic:

Provided that no such facility shall be constructed on a highway controlled by the Main Highways Board unless the Board has previously approved of its location and width:

Provided also that this section shall have no application to motor-ways.

24 Dedication of new streets on subdivision.

Repeal.

Section one hundred and twenty-five of the principal Act is hereby amended by repealing subsection five, and substituting the following subsection:—

“(5) The owner shall submit to the local authority for its approval a plan showing the position, course, levels, grades, and extent of the proposed road or street, and of the proposed carriage-way and footpaths within the limits thereof, and on such approval being obtained shall form the road or street so dedicated and the said carriage-way and footpaths in accordance with the approved plan to the satisfaction of the local authority; and shall, if so required by the local authority, metal and permanently surface the carriage-way and footpaths or any required portion thereof, and provide and lay kerbing and water-channels and necessary pipes for water-supply and drains to the satisfaction of the local authority, and shall also construct in connection therewith such other drains as may be agreed upon between the owner and the local authority. For the purposes of this subsection a carriage-way or footpath shall be deemed to be permanently surfaced if it has received a sealing coat of tar, bitumen, or other suitable material to the satisfaction of the local authority.”

25 Section 128 of principal Act (as to setting back frontage of narrow road or street) amended.

- (1) Section one hundred and twenty-eight of the principal Act is hereby amended by omitting from the proviso to subsection one the words “and such resolution is approved by the Governor-General in Council”, and substituting the words “but, except where a memorandum of acceptance containing a condition that no building or part of a building shall at any time be erected on the land within a specified distance (being not less than thirty-three feet) from the centre-line of the road or street, is deposited with the District Land Registrar or Registrar of Deeds for registration in accordance with this section, no such resolution shall have effect until it is approved by the Governor-General in Council and

a memorandum in respect of the Order in Council is registered in accordance with this section.”

Repeal.

- (2) The said section one hundred and twenty-eight is hereby further amended by repealing subsections two and three, and substituting the following subsections:—

“(2) The resolution or approval may impose such conditions with respect to the building-line as the local authority, or the Governor-General by Order in Council, thinks fit to impose, and may refer to one or both sides of the road or street:

“Provided that any conditions imposed by the local authority may be varied or cancelled by the Governor-General by Order in Council in any case where the approval of the Governor-General in Council is required under this section.

“(3) Where the resolution is approved by the Governor-General in Council, the resolution, with the approving Order in Council, shall be published in the *Gazette*, and thereupon the Minister shall transmit a copy of the *Gazette* to the District Land Registrar or Registrar of Deeds, as the case may require, who shall deposit the same in his office and register against the title to all land affected thereby a memorandum under his hand that the land is exempted from this section either absolutely or, as the case may be, subject to conditions as specified in the deposited copy of the *Gazette*.

“(3a) In this section and in sections one hundred and thirty-one and one hundred and thirty-two of this Act the term ‘memorandum of acceptance’ means a memorandum of acceptance of restriction as to building-line, which shall be as nearly as possible in the form set out in the Eleventh Schedule to this Act, and shall contain a copy of the resolution of the local authority, certified by the Clerk thereof to be true and correct, and an acceptance signed by the owner of the land; and, if he is not the registered proprietor, the memorandum of acceptance shall bear a certificate or other evidence to the satisfaction of the District Land Registrar or Registrar of Deeds that the person who signed the memorandum of acceptance is the owner of the land.

“(3b) A memorandum of acceptance may be lodged with the District Land Registrar or Registrar of Deeds, as the case may require, who shall deposit the same in his office and register against the title to all land affected thereby a memorandum under his hand that the land is exempted from this section subject to the condition in the memorandum of acceptance of restriction as to building-line, which shall be identified by its deposit number.

“(3c) Upon registration of an approving Order in Council which has been published in the *Gazette*, or upon registration of a memorandum of acceptance, the following provisions shall apply:—

“(a) The registration shall affect with notice of the resolution and Order in Council or memorandum of acceptance, all persons having any estate or interest in the land and their successors in title:

“(b) If any building is at any time commenced or erected in breach of any of the conditions imposed by the Order in Council or set out in the memorandum of acceptance, the person for whom the work is done shall be liable on summary conviction to a fine not exceeding fifty pounds for every day during which the breach continues:

“(c) In addition to all other remedies for the recovery of any such fine, the amount thereof with costs shall by virtue of this Act be a charge on the land, and any such charge may be enforced by a sale of the land in such manner and on such terms as the Minister directs:

“(d) The proceeds of any sale under this section shall be applied, firstly, in payment of the costs, charges, and expenses incurred in and about the sale; secondly, in satisfaction of the amount of the fine and costs; and, thirdly, in payment of the surplus, if any, to the Public Trustee for the persons entitled, upon their establishing their right thereto.”

- (3) The principal Act is hereby amended by adding thereto the Eleventh Schedule set out in the Second Schedule to this Act.

26 Subdivisions of Greymouth Maori Reserve.

1887, No. 29

- (1) For the purposes of this section, unless the context otherwise requires,—
 “Greymouth Maori Reserve” means the Greymouth Maori Reserve referred to in section twenty-four of the Westland and Nelson Maori Reserves Act, 1887:
 “Lessee” includes a lessee or sublessee under either a registered or an unregistered lease; and also includes the assignee, whether by purchase or otherwise, of a lessee or sublessee.
- (2) In any case where a person with the consent of the Maori Trustee subdivides or has subdivided land in the Greymouth Maori Reserve of which he is lessee into allotments for the purpose of disposing of his interest in any such allotment, whether by way of sale or sublease, section one hundred and twenty-eight of the principal Act shall apply only to that land, and nothing in that section shall be so construed as to require the owner of that land to set back the frontage of any adjoining land owned by him, or to dedicate any part of the adjoining land as a public road or street in accordance with the provisions of the said section one hundred and twenty-eight.

27 Cancellation or variation of conditions imposed by Order in Council or memorandum of acceptance under section 125 or section 128 of the principal Act.

Repeal.

- (1) Section one hundred and thirty-one of the principal Act is hereby amended by repealing subsection one, and substituting the following subsection:—

“(1) Where by any Order in Council or memorandum of acceptance conditions have, whether before or after the passing of this Act, been imposed with respect to the building-line in the case of any road or street, the Governor-General may from time to time, by Order in Council, on the application of the local authority having control of the road or street, amend the first-mentioned Order in Council or the memorandum of acceptance, as the case may be, by cancelling or varying the conditions so imposed thereby, and any such cancellation or variation may extend either to the whole or any part or parts of the said road or street.”

(2) The said section one hundred and thirty-one is hereby further amended by inserting in subsection two, after the words “original Order in Council”, the words “or the memorandum of acceptance”.

28 Section 132 of principal Act (as to permits to build garages outside building-line) amended.

Repeal.

Section one hundred and thirty-two of the principal Act is hereby amended by repealing subsection one, and substituting the following subsection:—

“(1) Where in any Order in Council or memorandum of acceptance under section one hundred and twenty-five or section one hundred and twenty-eight hereof conditions have been imposed or are deemed to have been imposed with respect to the building-line in the case of any road or street or specified part thereof, the local authority may, notwithstanding anything to the contrary in the said sections, grant permits for the erection of private motor-garages adjacent to the line of the road or street, or to a line intermediate between the line of the road or street and the building-line:

“Provided that no such permit shall be granted in contravention of any express conditions relative to the grant of permits that may hereafter be imposed by the Governor-General by any Order in Council or in contravention of any provision made under a town-planning scheme or an extra-urban planning scheme under the Town Planning Act, 1926.”

29 Taking and closing of roads and streets.

(1) The Governor-General may, by Proclamation, subject to the provisions of this section, proclaim any land (whether Crown land or not) as a road or street:

Provided that no land shall be so proclaimed without the consent in writing of—

- (a) The lessee or licensee in the case of land vested in His Majesty and held under lease or licence:
- (b) The body or persons in whom, in the case of any reserve or endowment or land held in trust, the land or the control thereof is vested, and the lessee or licensee, if any, of that land. Notwithstanding anything to the

contrary in any Act or rule of law, the body or persons in whom any land or the control thereof may be vested as aforesaid shall have authority to give any consent that may be required for the purpose of this section:

- (c) The owner in the case of land not of the classes referred to in paragraph (a) and paragraph (b) of this proviso:
- (d) The Main Highways Board and the local authority in whose district the land is situated in the case of a main highway or a proposed main highway outside a borough; the Borough Council in the case of a street or proposed street within a borough; the County Council in the case of a county road or proposed county road outside a town district; or the Town Board in the case of a road or street or proposed road or street within a town district to which the foregoing provisions of this paragraph do not apply:

Ibid., p. 1143

- (e) All other persons who have any registered interest in the land, or any other interest disclosed by a register under the Land Transfer Act, 1915, or the Deeds Registration Act, 1908.
- (2) On the date of the publication in the *Gazette* of a Proclamation issued under subsection one of this section, or on such later date as may be specified in that Proclamation as the date when it shall take effect, all land to which the Proclamation relates shall be deemed to be vested in the Crown in the case of a road, or in the Corporation of the borough in which it is situated in the case of a street, as a road or street, as the case may be, but otherwise free from all reservations, restrictions, trusts, rights, titles, estates, or interests of any kind whatsoever.

1933, No. 30

- (3) Subject to the consent of the Main Highways Board and the local authority in whose district the land is situated in the case of a main highway outside a borough, the Borough Council in the case of a street within a borough, the County Council in the case of a county road, or the Town Board in the case of a road or street within a town district to which the foregoing provisions of this subsection do not apply, the Governor-General may, by Proclamation, close that road or street, or any part thereof. In the case of a closed street situated in a borough the land comprised therein may be dealt with by the Borough Council in the same manner in all respects as if it had been closed pursuant to the provisions in that behalf of the Municipal Corporations Act, 1933. In any other case the land comprised in a closed road or street may be granted or otherwise disposed of in exchange for the land or any portion of the land comprised in any other road or street, whether proclaimed under this section or not, or if not required for the purposes of the exchange, may be dealt with as Crown land under the Land Act, 1924, or, in any case where the Governor-General considers it equitable to do so, may be granted or otherwise disposed of to the

owner of any adjoining land. Land comprised in any road or street closed under the authority of section twelve of the Land Act, 1924, or the corresponding provisions of any former Land Act may be dealt with in the same manner in all respects as if that road or street had been closed under the authority of this section.

- (4) All lands disposed of under this section by way of lease or licence in exchange for lands held under lease or licence from the Crown shall be deemed to be incorporated in that lease or licence from the Crown, and shall, subject to any consequential adjustment of rent, be held on the same tenure and upon the same terms and conditions, and be subject to the same rights, titles, interests, and encumbrances, as the other land comprised in that lease or licence.
- (5) Notwithstanding anything in the foregoing provisions of this section, where the land comprised in any road or street closed as aforesaid, or where portion of that land intersects or is adjacent to any reserve or endowment, or any land held, taken, set apart, purchased, or otherwise acquired for any public work, the Governor-General may, by the Proclamation closing the road or street or by a subsequent Proclamation, declare the land comprised in the closed road or street, or in the portion thereof, that intersects or is adjacent to the reserve or endowment or other land as aforesaid to be added thereto, and thereupon the land shall vest in the same authority as the reserve or endowment or other land as aforesaid and be subject to the same reservations and trusts. Where any such reserve or endowment is vested in His Majesty or, not being so vested, is administered by a Land Board pursuant to any lawful authority, any land added thereto or any portion of that land may be incorporated in any lease or licence of adjacent land within the said reserve or endowment, and thereupon the provisions of subsection four of this section shall, with any necessary modifications, apply as if the incorporation were an incorporation of land in a lease or licence under that subsection.
- (6) Where by reason of the Proclamation of any land as a road or street any land adjacent thereto is rendered unsuitable or inconvenient for profitable occupation by the owner, lessee, or licensee, the Governor-General may, by the original or by a subsequent Proclamation, take that adjacent land, or resume any adjacent land vested in the Crown and comprised in any lease or licence, or allocate to the purposes of this subsection any adjacent land owned by the Crown or vested in the Crown for any purpose, which shall thereupon vest, in the case of land within a borough, in the Corporation of the borough, and in any other case in the Crown, free from all reservations, restrictions, trusts, rights, titles, estates, or interests of any kind whatsoever. The power conferred on the Governor-General by this subsection shall not be exercised with respect to any land save with the consent in writing of the owner, lessee, or licensee and of all other persons having any registered interest therein, or any other interest disclosed by a register under the Land Transfer Act, 1915, or the Deeds Registration Act, 1908. Any land taken or resumed or allocated under this

subsection may be dealt with in all respects as if it had been comprised in a road or street closed pursuant to this section.

Ibid., pp. 638, 639

- (7) The provisions of sections twenty-eight and twenty-nine of the principal Act shall apply with respect to dealings in land under this section.
- (8) Upon the presentation to him of a copy of any Proclamation closing any road or street under this section, together with a copy of the plan or plans referred to therein, the District Land Registrar or the Registrar of Deeds, as the case may be, of the district in which the closed road or street is situated shall note the closing upon the appropriate folio of the proper register-book.
- (9) The recital in any Proclamation under this section of the name and description of any person to whom any land referred to in the Proclamation is to be granted as hereinbefore provided shall be sufficient authority to the District Land Registrar of the district in which the land is situated to issue to the person so named a certificate of title in respect thereof.
- (10) The recital in any Proclamation, or a certificate under the hand of the Commissioner of Crown Lands for the Land District in which the land is situated, that any land is to be incorporated in any lease or licence pursuant to this section shall be sufficient authority to the District Land Registrar of the district in which the land is situated to make an appropriate entry without fee in respect of the incorporation on the lease or licence or other instrument of title which is registered in his office, and also upon the outstanding duplicate thereof.

Ibid., p. 1143

- (11) The publication in the *Gazette* of any Proclamation purporting to be issued under this section shall be conclusive evidence that all conditions precedent to the issue of the Proclamation have been complied with, and no person shall be concerned to inquire whether any consent has been given or other condition attaching to the issue of the Proclamation has been fulfilled. The consent of any person having a registered interest in any land in respect of which a Proclamation is proposed to be issued under this section, or having an interest therein disclosed by a register under the Land Transfer Act, 1915, or the Deeds Registration Act, 1908, but not being the owner or the lessee or licensee of the land, may be dispensed with in any case if the Governor-General is satisfied that the interest of that person will not be prejudicially affected by the issue of a Proclamation under this section.
- (12) Any consent under paragraph (b), or paragraph (c), or paragraph (e) of subsection one of this section to the Proclamation of any land as a road may be given subject to the condition that other land (being land that may be so disposed of under this section) shall be granted or otherwise disposed of in exchange for the land to be proclaimed as a road, and (if the person giving the consent thinks fit) subject to the further condition that the other land shall be so granted or

disposed of subject to any registered encumbrance, lien, or interest to which the land to be proclaimed as a road is subject.

- (13) Where, in any case to which subsection four of this section does not apply, any land that is subject to any registered encumbrance, lien, or interest is proclaimed as a road with the consent under paragraph (b), or paragraph (c), or paragraph (e) of subsection one of this section of the owner or body or persons in whom the land or the control thereof is vested and with the consent of the person entitled to the registered encumbrance, lien, or interest, and other land is granted or otherwise disposed of in exchange therefor, then, if the consents are subject to a condition to that effect, the other land shall be granted or disposed of subject to that registered encumbrance, lien, or interest.
- (14) On the issue of a certificate of title for any land granted or otherwise disposed of subject to any registered encumbrance, lien, or interest as aforesaid, every instrument creating or evidencing or affecting that encumbrance, lien, or interest, and all covenants and other provisions expressed or implied therein, shall be construed as if the land so granted or disposed of were the land or, as the case may be, part of the land to which the instrument relates.
- (15) On the issue of a certificate of title for any land granted or otherwise disposed of 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 a memorial setting out the effect in the circumstances of the last preceding subsection.
- (16) Where any land that is subject to any reservation or restriction is proclaimed as a road and any other land is granted or otherwise disposed of in exchange therefor under this section, then, unless in any case the Governor-General otherwise directs, the other land shall be granted or disposed of subject to that reservation or restriction or such other reservations or restrictions as the Governor-General directs.
- (17) The provisions of the last five preceding subsections shall apply with respect to consents under subsection six of this section to the taking of any land under that subsection as if they were consents under paragraph (b), or paragraph (c), or paragraph (e) of subsection one of this section to the Proclamation of the land as a road.

Repeals. 1932, No. 9 1940, No. 18

- (18) Section twelve of the Land Act, 1924, section three of the Land Laws Amendment Act, 1927, section twenty-one of the Land Laws Amendment Act, 1929, section five of the Land Laws Amendment Act, 1930, section four of the Land Laws Amendment Act, 1932, and section twenty-five of the Statutes Amendment Act, 1940, are hereby consequentially repealed.

Compare: Land Act, 1924, No. 31, s. 12 1940, No. 18, s. 25(1) 1940, No. 18, s. 25(2) *ibid.*, s. 25(3) *ibid.*, s. 25(4) *ibid.*, s. 25(5) 1940, No. 18, s. 25(6)

30 Section 140 of principal Act (as to removal of stone, &c., from road or public work) amended.

Section one hundred and forty of the principal Act is hereby amended by adding the following subsection

- “(3) Every person who removes any timber, stone, mineral, metal, or other substance from a public road or other public work, otherwise than in pursuance of an existing contract of sale made under this section, commits an offence and shall be liable on summary conviction to a fine not exceeding twice the severed value of the timber, stone, mineral, metal, or other substance removed without authority, or ten pounds, whichever is the greater.”

31 Gates across roads.

- (1) Section one hundred and forty-four of the principal Act is hereby amended by omitting from subsection one the words “ten feet”, and substituting the words “twelve feet”.
- (2) Where any swing-gate or fence has been lawfully erected under the said section one hundred and forty-four prior to the passing of this Act, it may be maintained under that section as if this section had not been passed.

32 Sections 169 and 170 of principal Act (as to removal of trees and hedges detrimental to roads and streets) amended.

- (1) The powers in relation to trees and hedges conferred by sections one hundred and sixty-nine and one hundred and seventy of the principal Act may be exercised by any person or authority authorized under any Act to construct, work, or carry on any electricity, tramway, gas, water, irrigation, or other public undertaking, and, notwithstanding the provisions of section one hundred and nine of the principal Act, those powers may be so exercised within as well as outside any borough.
- (2) For the purposes of the last preceding subsection, subsection one of section one hundred and seventy of the principal Act, as amended by this section, shall be read as if the words “or street” had been inserted after the word “road” in each place where that word occurs except in paragraph (b).
- (3) Section one hundred and sixty-nine of the principal Act is hereby amended—
 - (a) By omitting the words “overshadow any road or street so as to be detrimental to the maintenance thereof”, and substituting the words “are growing or standing on any land so as to be detrimental to the maintenance of any road or street”:
 - (b) By inserting, after the word “traffic,”, the words “or where trees or hedges grow in such relationship to any road or street that portions of the trees or hedges may under storm conditions blow on to the road or street or otherwise cause interference with any public undertaking lawfully thereon or with any lawful use of the road or street,”.

- (4) Section one hundred and seventy of the principal Act is hereby amended by inserting in paragraph (a) of subsection one, after the word “thereto”, the words “or so as to cause interference under storm conditions with any public undertaking lawfully upon or any lawful use of the road”.
- (5) The said section one hundred and seventy of the principal Act is hereby further amended by inserting in subsection four, after the word “includes”, the word “willow”.

33 Poles on roads.

- (1) In this section, unless the context otherwise requires,—

“Controlling Authority” means the authority in which is vested the control of the road, and includes the Governor-General and the Main Highways Board where the control of the road is vested in the Governor-General or the Main Highways Board:

“Road” includes highway, street, and service-lane:

“Structure” means any tower, pole, or post lawfully on any road, but does not include any part of a bridge or culvert, or any fence, gate, or cattle-stop erected in accordance with the principal Act, or anything provided for the assistance of traffic:

“Utility authority” includes any Minister of the Crown, local authority, company, or person authorized by or under this or any other Act or by any rule of law to construct, maintain, or use any structure upon a road.
- (2) Where any structure has been erected upon any road either before or after the passing of this Act, any Magistrate, upon application made by the controlling authority and upon hearing both parties, if he is satisfied that the structure is or is likely to become dangerous to vehicles and persons in them using the road, may make such an order as he thinks necessary to abate the danger, and may by the order direct the removal of the structure by the utility authority upon the terms set out in the next succeeding subsection and otherwise upon such terms and within such time as he thinks fit.
- (3) Subject to any agreement to the contrary the reasonable cost of the removal and re-erection of any structure under any such order, including a reasonable sum for proper overhead charges, shall be borne by the controlling authority and the utility authority in equal shares, and the amount payable to the utility authority may be recovered as a debt.

Licences and Authorities may be held by His Majesty

34 Licences and authorities may be held by His Majesty.

- (1) It shall be lawful and shall be deemed to have always been lawful for His Majesty the King to be granted or to acquire in any way and to hold on the same terms and conditions as any of His Majesty’s subjects any licence, permit, right, privilege, or authority which can be granted by His Majesty or

by any Court or any public or local authority under the principal Act, the Licensing Act, 1908, the Cinematograph Films Act, 1928, the Board of Trade Act, 1919, the Counties Act, 1920, the Municipal Corporations Act, 1933, or the Industrial Efficiency Act, 1936, and which can be acquired or held by any of His Majesty's subjects.

- (2) Notwithstanding anything to the contrary contained or implied in this Act or in any of those Acts, every licence, permit, right, privilege, and authority held by His Majesty or the Minister or any person on behalf of His Majesty under any of those Acts shall, notwithstanding any express limitations therein as to its term, continue in full force and effect as if it had from time to time been renewed for the original term thereof until expressly surrendered or relinquished by or on behalf of His Majesty, or in the event of it being transferred until the expiry of the then current renewal, and every such licence, permit, right, privilege, and authority which expired before the commencement of this Act while it was held by His Majesty or the Minister or any person on behalf of His Majesty, is hereby revived.
- (3) Section three hundred of the principal Act is hereby amended by omitting from paragraph (*i*) the words "that any such licence or authority be renewed in any way, or", and by omitting from that paragraph all words after the words "on behalf of His Majesty".

Railways

35 Procedure for making railway.

Section two hundred and sixteen of the principal Act is hereby amended by adding the following subsections:—

- “(4) For the purposes of this section and of the corresponding provisions of any former Acts the term ‘land’ shall include and be deemed always to have included a road or street.
- “(5) Where any road or street or any part thereof is or has been taken for a railway by Proclamation under paragraph (*d*) of subsection one of this section or under the corresponding provisions of any former Act, the road or street or part so taken shall be deemed, as from the taking thereof, to cease to be a public highway and to be wholly closed and taken for the railway.”

Artificial Lakes

36 Regulations as to use of any lake formed by the construction of a Government work.

- (1) In this section, unless the context otherwise requires,—
 - “Artificial lake” means a body of water formed or impounded by a Government work or by a work acquired by His Majesty:
 - “Natural lake” means a lake that is not an artificial lake.

- (2) Where a natural lake exists before the construction of a Government work, or a work acquired by His Majesty, which increases the area of that lake, the whole of the lake as so increased in area shall be deemed to be a natural lake for the purposes of this section.
- (3) In addition to all powers of making regulations in respect of lakes conferred on him by the Harbours Act, 1923, or by any other Act, the Governor-General may from time to time, by Order in Council, in respect of any artificial lake, make regulations—
 - (a) Prohibiting, or permitting, regulating, and prescribing terms and conditions for, the use of the lake or the waters thereof or any part thereof:
 - (b) Prohibiting, or permitting, regulating, and prescribing terms and conditions for, the discharge into or placing in the lake of any solid or liquid matter likely to settle in the lake, or cause an obstruction therein, or pollute its waters, or interfere with any authority or person lawfully using the lake, or its waters, or any part thereof:

Provided that any regulation made under this paragraph shall not permit the discharge or placing of any matter into or in the lake in contravention of any Act, regulation, or by-law:
 - (c) Prescribing fines, not exceeding one hundred pounds in any case, for the breach of any regulations made under this section.
- (4) Regulations under this section may be made generally in respect of all artificial lakes, or in respect of any one or more of such lakes.
- (5) The power of making regulations under this section shall be exercisable in respect of such parts of any natural lake as lie within four hundred yards from any part of a Government work constructed for the purposes of utilizing the waters of the lake, or within four hundred yards from the outlet of the lake as it exists from time to time where a work designed for the control of the level of the waters of the lake is constructed on a river or stream flowing from the lake, in the same manner as if those parts of the natural lake were parts of an artificial lake.
- (6) The power of making regulations under this section may be exercised in respect of such part of any river or stream as lies between a work constructed for the control of the level of the waters of a lake from which it flows and the outlet of the lake in the same manner as if that part of the river or stream were an artificial lake.
- (7) The provisions of Part II of the Fisheries Act, 1908, shall apply to any artificial lake as though the waters thereof were not private waters.

37 Secondary use of land taken for a public work.

- (1) Where the Governor-General is of opinion that it is practicable for any land at any time held, taken, purchased, or acquired for a public work under this or any other Act or Provincial Ordinance to be applied also to any secondary

use or uses, either public or private, without interfering with the public work for which the land is held, taken, purchased, or acquired, the Governor-General may, by Order in Council, authorize the application of that land to that use or those uses.

- (2) Every Order in Council under this section shall specify the land affected thereby and the secondary use or uses thereby authorized.
- (3) For the purposes of any such Order in Council the land may be defined by survey data, or by physical features, or by such other means as may seem best suited to the circumstances.
- (4) For the purposes of any such Order in Council, any definition of secondary use may specify particular uses which alone are permitted or may be in general terms with or without specified exceptions.
- (5) At any time after any such Order in Council has come into force, the Minister or the local authority, as the case may be, may apply the land to any authorized secondary use or may grant licences, permits, and privileges in respect of any authorized secondary use of the land to any persons upon or subject to such terms and conditions as the Minister or the local authority or any public body in which powers under this section may be vested, thinks fit, for any period not exceeding twenty-one years with or without right of renewal:

Provided that any such licence, permit, or privilege may be immediately revoked upon the breach of any of the terms or conditions upon or subject to which it is granted, or if in the opinion of the Minister or local authority concerned the service of the public so requires.

- (6) If the secondary use authorized by any such Order in Council includes the general characteristics of a public reserve, domain, or national park within the meaning of the Public Reserves, Domains, and National Parks Act, 1928, or of a scenic or historic reserve under the Scenery Preservation Act, 1908, the Governor-General, by the same or another Order in Council, may specify which, if any, of the provisions of any of those Acts shall apply to the land, and may vest the control thereof in any local or public authority, Domain Board, National Park Board, special Board constituted under section thirteen of the Scenery Preservation Act, 1908, or persons acting as trustees for the inhabitants of the locality upon such conditions as may be prescribed in the Order, and may make such other provisions in respect thereof as he thinks fit, having regard to the continued and future use of the land for the public work for which it was acquired.
- (7) Any Order in Council under this section may from time to time be amended or revoked by a subsequent Order in Council.
- (8) Where any land defined in an Order in Council under this section is covered by water, the provisions of this section shall apply to the water as well as the land.

38 Compensation under sections 36 and 37 of this Act.

- (1) On the termination or revocation of any licence, permit, or privilege granted under section thirty-seven of this Act, or under regulations made under section thirty-six of this Act, compensation shall be payable only for improvements to the land made with the written approval of the grantor, and no compensation shall be payable if there has been a breach of any term or condition upon or subject to which the licence, permit, or privilege was granted unless the grantor agrees to waive the breach.
- (2) No compensation shall be payable in respect of any reduction of the value of any such licence, permit, or privilege caused by the operation or cessation of the public work.

39 Revenue and expenditure under sections 36 to 38 of this Act.

- (1) All revenue arising out of the granting of licences, permits, or privileges under section thirty-seven of this Act or under regulations made under section thirty-six of this Act, and all fees, dues, and charges received by virtue of sections thirty-seven and thirty-eight of this Act or those regulations shall, in the case of works under the control of the Minister, be paid into the Account to which the cost of the public work has been charged, and in the case of works under the control of a local authority, be paid to the local authority for its general purposes or such special purposes as may be specified by Order in Council.
- (2) All expenditure arising out of the granting of licences, permits, or privileges under section thirty-seven of this Act or under regulations made under section thirty-six of this Act and all refunds of fees, dues, and charges made and all compensation paid by virtue of sections thirty-seven and thirty-eight of this Act or those regulations shall, in the case of works under the control of the Minister, be paid out of moneys appropriated by Parliament for that purpose, and in the case of works under the control of a local authority, be paid out of the general funds of that local authority, or if any Order in Council so provides out of the revenues received by the local authority under the last preceding subsection.
- (3) In the case of works under the control of the Minister, any remission, either wholly or in part, of any fees, dues, and charges payable in respect of any such licence, permit, or privilege shall be made in accordance with the provisions of section three of the Public Revenues Act, 1926.
- (4) In the case of works under the control of a local authority any remission, either wholly or in part, of any fees, dues, and charges payable in respect of any such licence, permit, or privilege shall be made by resolution of the local authority.

*Irrigation***40 Expired irrigation agreements to continue in force until supply of water discontinued or new agreement made.***1935, No. 27*

Where water continues to be supplied and accepted after the expiry of any irrigation agreement entered into in accordance with Part XI of the principal Act, or section eight of the Public Works Amendment Act, 1935, the expired agreement shall be deemed to continue in force until either the supply of water is discontinued or a new agreement is made, and all the provisions of the principal Act shall apply as if the agreement had not expired.

41 Registered irrigation charges.*1933, No. 41 1935, No. 27*

- (1) This section shall apply to every certificate registered before or after the commencement of this Act against the title to any land under section two hundred and eighty of the principal Act, as amended by section thirty-seven of the Finance Act (No. 2), 1933, or under section nine of the Public Works Amendment Act, 1935.
- (2) Every certificate shall operate to secure, in addition to all moneys which it would otherwise secure, all unpaid moneys which after the signing of the certificate accrue due under an irrigation agreement registered against the title to the land, or in respect of water supplied to or for the benefit of the land where no irrigation agreement has been so registered.
- (3) Upon payment of all moneys for the time being secured by any certificate, the Minister, if requested, shall cause a release of the certificate to be registered, and on the registration of any such release there shall be payable by the person liable for the moneys so secured to the District Land Registrar or Registrar of Deeds, as the case may require, a registration fee of five shillings.
- (4) Application for the registration of a release of a certificate shall be made in writing by the Minister, or by any person authorized by the Minister in that behalf either generally or in respect of any specified release or of any specified class or classes of releases.

1933, No. 41

- (5) Section two hundred and eighty of the principal Act is hereby amended by inserting in subsection one (as set out in section thirty-seven of the Finance Act (No. 2), 1933), after the words "agreement is registered", the words ", or any other person appointed by the Minister of Works either generally or specially for the purpose,".

1935, No. 27

- (6) Section nine of the Public Works Amendment Act, 1935, is hereby amended by inserting in subsection one, after the words "for the district in which the land is

situated”, the words “, or any other person appointed by the Minister of Works either generally or specially for the purpose,”.

Repeals. 1933, No. 41 1935, No. 27

- (7) Subsection two of section two hundred and eighty of the principal Act, as set out in section thirty-seven of the Finance Act (No. 2), 1933, and subsection seven of section nine of the Public Works Amendment Act, 1935, are hereby consequentially repealed.

Excavations near Public Works

42 Excavations near public works.

Except with the prior consent in writing of the Minister, local authority, or other public authority having the control of a public work, and subject to such conditions as may be specified in the consent, no person shall excavate or otherwise interfere with any lands in the vicinity of that work if that excavation or interference is likely to produce, either directly or indirectly, a subsidence on to that work, or a subsidence of that work or of the soil thereunder:

Provided that nothing in this section shall prevent any such excavation or interference if that excavation or interference does not anywhere disturb the soil within an angle of forty-five degrees from the horizontal measured either upwards or downwards from ground-level at the nearest part of the public work.

Transmission-lines

43 Transmission-lines.

- (1) This section shall be deemed part of Part XIII of the principal Act.
- (2) For the purposes of this section, the term “transmission-line” means any electric line, wire, cable, or other conductor used or intended to be used for the transmission of electrical energy, and includes any tower, pylon, gantry, pole, support, insulator, casing, tube, maintenance telephone wire, and any other work, structure, or apparatus forming part of, or used or intended to be used for the support, maintenance, insulation, or protection of, any transmission-line.
- (3) Where, under the powers conferred by the principal Act or by any other Act, it is proposed to construct, erect, or lay down any transmission-line over, upon, or under any land, the Governor-General may issue a Proclamation defining the middle-line of that transmission-line, or of any part thereof, and in any such case the provisions of section two hundred and sixteen of the principal Act shall, as far as they are applicable, and with the necessary modifications, and except in so far as the same may be inconsistent with the provisions of this section, apply in respect of the construction of the transmission-line in like manner as if a railway were to be constructed.

- (4) Every Proclamation defining the middle-line of a proposed transmission-line, or of any part thereof, issued under this section shall define, by reference either to the distance on each side of the middle-line or to the more distant section boundaries, or by reference to both, all land within four chains from the middle-line upon or in respect of which it is intended to exercise the powers conferred by the principal Act or by any other Act in respect of the erection, maintenance, and use of the transmission-line.
- (5) The Minister shall cause a copy of every Proclamation defining the middle-line of any transmission-line, or of any part thereof, issued under this section, and of every map and plan prepared in connection therewith, to be deposited without fee in the District Land Registry Office for each district in which is situated any land affected by the Proclamation.
- (6) Where the land affected by any such Proclamation is subject to the Land Transfer Act, 1915, the District Land Registrar shall register against the land a memorial of the Proclamation and of the accompanying maps and plans, and in every other case the Registrar of Deeds shall cause an entry thereof to be made under the proper head or title in the Index Book of the Deeds Register Office.
- (7) As soon as may be after the public notification of the Proclamation defining the middle-line of a transmission-line, the Minister shall notify the persons then owning and occupying the land affected by the Proclamation that it is intended to take any part of the land for the transmission-line, or that it is intended to construct the transmission-line over, upon, under, or close to the land, or that the land will not be affected, as the case may be; and if any land is to be taken the time for claiming compensation shall run from the date of the Proclamation taking the land; and if the transmission-line is to pass over, upon, under, or close to the land without any part of the land being taken the time for claiming compensation for any injurious effect thereto shall run from the date of entry for construction.
- (8) At any time after a transmission-line or part thereof has been completed, or after the construction of a proposed transmission-line has been abandoned, or after the Minister is satisfied that any transmission-line referred to in a Proclamation under this section does not, or will not, pass over, upon, or under, or injuriously affect the land against which the Proclamation has been so registered, or if for any other reason the Minister deems it expedient so to do, the Minister may cause to be deposited without fee in the appropriate District Land Registry Office a certificate signed by him or on his behalf authorizing the cancellation of the registration of the Proclamation and setting forth a description or reference to all lands in respect of which cancellation of the registration is desired. On the deposit of any such certificate the District Land Registrar shall take all necessary steps to discharge or cancel the memorials or entries made under this section in respect of all lands referred to in the certificate.

1944, No. 31

(9) Section twenty-nine of the Finance Act (No. 3), 1944, is hereby amended by inserting in subsection three, after paragraph (b), the following paragraph:—

“(bb) In the case of a transmission-line in respect of which a Proclamation was issued pursuant to the provisions of section forty-three of the Public Works Amendment Act, 1948, the date of the first gazetting of the Proclamation defining the middle-line of the said transmission-line, or five years before the date of entry on the land for the construction of the transmission-line whichever is the later.”

Motor-ways

44 Governor-General may authorize and declare motor-ways.

1947, No. 46

Section three of the Public Works Amendment Act, 1947, is hereby repealed, and the following section is substituted therefor:—

“3

Repeal.

“(1) At the request of the Main Highways Board the Governor-General may from time to time by Order in Council published in the *Gazette*—

“(a) Authorize the construction of a motor-way, and state as nearly as possible the line of the motor-way, and the two termini thereof:

“(b) Declare any land or any public highway, whether then actually constructed as a motor-way or not, to be a motor-way.

“(2) Every Order in Council under this section may in like manner be from time to time amended or revoked.”

General

45 Leases to Milk Treatment Corporations.

1945, No. 40 1936, No. 5 1934, No. 34 1944, No. 30

Any lands held, taken, purchased, or acquired under the principal Act for the purposes of a Milk Treating House may be leased under section forty of the Statutes Amendment Act, 1945, as if they were lands of the Crown to any Milk Treatment Corporation constituted under the Marketing Act, 1936, or the Agriculture (Emergency Powers) Act, 1934, to any Milk Authority constituted under the Milk Act, 1944, or to any incorporated company or society having among its objects the production, treatment, or marketing of milk or cream.

46 Widening definition of “public work” in relation to educational institutions.

Section two of the principal Act is hereby amended by repealing paragraph (d) of the definition of “public work” and “work”, and substituting the following paragraph:—

1917, No. 28

- “(d) The New Zealand University and the New Zealand School of Agriculture; any University or University college or Agricultural college or secondary school mentioned in the Eleventh and Ninth Schedules of the Education Act, 1914; any school established under section eighty-eight of that Act; any technical school as defined in section one hundred and nine of that Act as amended by section four of the Statute Law Amendment Act, 1917; any combined schools combined under the provisions of the Education Amendment Act, 1924, and the New Plymouth Combined School, the Napier Combined School, Wairarapa College, and the Nelson Combined School; any Maori school; any public school within the meaning of the Education Act, 1914; any kindergarten or pre-primary school; any special school as defined by section one hundred and twenty-seven of the Education Act, 1914; any lands for play grounds, teachers’ residences, hostels for students, buildings for the recreational and social use of students, and houses for the members of the staff and employees of any such University, School of Agriculture, University college, school, or kindergarten, for any dental or speech clinic, or for any other purpose in connection with any such University, School of Agriculture, University college, school, or kindergarten.”

47 Allocation of land held for public works.

- (1) Section thirteen of the principal Act is hereby amended by inserting in paragraph (a), after the words “Crown land”, the words “or land held for any Government work”.
- (2) Section twenty-five of the principal Act is hereby amended by inserting in subsection two, after the words “with respect to”, the words “any land held for a Government work”.
- (3) Section thirty of the Finance Act (No. 2), 1945, is hereby amended by adding the following new subsection:—

- “(5) In addition to the provisions of the last preceding subsection, land taken under this section may be set apart for any Government work by Proclamation under section twenty-five of the principal Act, or taken for any local work by Proclamation under sections twenty-three and thirty-two of that Act.”

Schedules

FIRST SCHEDULE **Enactments repealed**

Section 12

1919, No. 6 (Local)—

The Wellington City Empowering and Amendment Act, 1919: Section 4.

1938, No. 8 (Local)—

The Timaru Borough Empowering Act, 1938.

1943, No. 2 (Local)—

The Napier Borough Empowering Act, 1943.

1944, No. 5 (Local)—

The Lower Hutt City Empowering and Vesting Act, 1944.

SECOND SCHEDULE
Schedule to be added to the Public Works Act, 1928

Section 25(3)

“ELEVENTH SCHEDULE

“Memorandum of Acceptance of Restriction as to Building-line

“Resolution

“The Council (*or* Board), being the local authority having control of the roads (*or* streets) in , by resolution declares that the provisions of section one hundred and twenty-eight of the Public Works Act, 1928, shall not apply to the side of the portion of Road (*or* Street) adjoining , being all (*or* part) of the land in certificate of title, Volume , folio , Registry, subject to the condition that no building, or part of a building, shall at any time be erected on the said land within a distance of feet (*being not less than thirty-three feet*) from the centre-line of the said portion of the said road (*or* street).

“I hereby certify that the foregoing is a true and correct copy of the resolution passed by the Council (*or* Board) on the day of , 19 “Clerk.

“Acceptance

“I, , of , being the owner of all that piece of land being , and being all (*or* part) of the land in certificate of title, Volume , folio , Registry, hereby accept the condition of the above resolution that no building or part of a building shall be erected on the land specified in the said resolution within a distance of feet from the centre-line of the portion of Road (*or* Street) adjoining the said land.

“Owner.

“*Witness:* .

“*Occupation:* .

“*Address:* .”