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1999, No. 125

An Act to amend the Local Government Act 1974

[14 October 1999

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

1. Short Title and commencement—(1) This Act may be cited as the Local Government Amendment Act (No. 5) 1999, and is part of the Local Government Act 1974 (“the principal Act”).

(2) This Act comes into force on the day after the date on which this Act receives the Royal assent.

2. Application of Part XXV—The principal Act is amended by inserting in Part XXV, before section 421 (as substituted by section 362 of the Resource Management Act 1991), the following section:

“420A. This Part—

“(a) Applies only to—

“(i) Water races owned by a council:

“(ii) Water races under construction by a council:

“(iii) Water races that a council has agreed to construct; and

“(b) Does not apply in respect of water races transferred by a council under Part XXIXA.”

3. Interpretation—(1) Section 422 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) Every water race vested in a council at the commencement of the Local Government Amendment Act (No. 5) 1999, being a water race that has been constructed or established under Part II of the Land Drainage Act 1908, or under the corresponding provisions of any former Act, is deemed to be a water race constructed by a council under this Part of this Act.”

(2) Section 422 of the principal Act is further amended by inserting, after subsection (3), the following subsection:

“(3A) Every irrigation district constituted under Part II of the Land Drainage Act 1908 and in existence at the

commencement of the Local Government Amendment Act (No. 5) 1999 is deemed to be a water-race area constituted under this Part of this Act.”

4. Drawing off water from streams supplying water race—Section 436 of the principal Act is amended by repealing subsection (3), and substituting the following subsections:

“(3) If any person fails to comply with a notice given to that person under subsection (1), the council, whether or not proceedings are taken against that person in respect of any offence, may, at any time after the lapse of a period of 24 hours from the giving of the notice, execute all the works necessary to restore that water race.

“(4) The council, whether or not it executes any work under subsection (3), may recover from any person who fails to comply with a notice given to that person under subsection (1)—

“(a) The costs or expenses (if any) incurred by the council under subsection (3); and

“(b) The expenses incurred by the council under this section in respect of any investigations or supervision carried out by the officers or agents of the council; and

“(c) The amount of any damage sustained by reason of the taking or diverting of the water.”

5. Interpretation—Section 489 (1) of the principal Act is amended by repealing the definition of the term “waste”.

6. Discharge of sewage into sewerage drain in accordance with bylaws not to constitute offence—Section 498 (1) of the principal Act is amended by omitting from the proviso the word “waste”, and substituting the word “contaminant”.

7. Application of Part XXIX—The principal Act is amended by inserting in Part XXIX, before section 502 (as substituted by section 362 of the Resource Management Act 1991), the following section:

“501F. This Part—

“(a) Applies only in respect of—

“(i) Drainage channels or land drainage works under the control of a council:

“(ii) Drainage channels or land drainage works under construction by a council:

“(iii) Drainage channels or land drainage works that a council has agreed to construct; and

“(b) Does not apply in respect of drainage channels or land drainage works transferred by a council under Part XXIXA.”

8. Removal of obstructions from drainage channel or watercourse—(1) Section 511 of the principal Act is amended by inserting, after subsection (5), the following subsection:

“(5A) Notwithstanding that no work has been carried out by the council under subsection (4), the council may recover any cost or expenses incurred by it under this section in respect of any investigations or supervision carried out by the officers or agents of the council.”

(2) Section 511 (6) of the principal Act is amended by inserting, after the words “The said cost”, the words “and expenses”.

9. Order of Court on application under section 511 or section 512—Section 513 of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Direct that—

“(i) A portion of the cost of removing the obstruction; and

“(ii) A portion of the cost and expenses incurred by the council under section 511 or section 512 in respect of any investigations or supervision carried out by the officers or agents of the council,—

be borne by any person holding any interest in the land or by any local authority whose district or works will be improved by that removal.”

10. Council may make advances to owners—Section 514 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

“(2) Instead of making any such advance to any owner, the council may, by agreement with the owner, itself do all or any of the things referred to in subsection (1), and all money expended by the council pursuant to that agreement, together with an amount to cover the cost of supervision by the officer or agents of the council, is deemed to be an advance for the purposes of this section.”

11. New Part XXIXA inserted—The principal Act is amended by inserting, after Part XXIX, the following Part:

“PART XXIXA

“DIVESTMENT OF LAND DRAINAGE SCHEMES AND WATER-RACE SCHEMES

“517A. **This Part subject to Resource Management Act 1991 and Soil Conservation and Rivers Control Act 1941**—Nothing in this Part of this Act derogates from the provisions of the Resource Management Act 1991 or the Soil Conservation and Rivers Control Act 1941.

“517B. **Interpretation**—In this Part, unless the context otherwise requires,—

“‘Drainage area’ means any area constituted under Part XXIX for land drainage purposes:

“‘Drainage channel’ and ‘channel’ have the meanings given to those terms by section 503:

“‘Land drainage scheme’ means all drainage channels or land drainage works relating to a particular land drainage system vested in a council or acquired or constructed or operated by or under the control of a council under Part XXIX:

“‘Land drainage works’ has the meaning assigned to that term by section 503:

“‘Occupier’, in relation to any land, means the owner of the land, except where a person other than the owner has a right to occupy the land by virtue of a tenancy granted for a term of not less than 12 months certain, in which case the term ‘occupier’ means that person; and includes any person having a right to occupy the land by virtue of a lease, licence, or other authority for a term of not less than 12 months certain:

“‘Scheme asset’ means any real or personal property of any kind of the local authority that is held or used (whether solely or partially) for the purposes of, or in relation to any land drainage scheme or water-race scheme proposed to be transferred under this Part, whether or not subject to rights, and, without limiting the generality of the foregoing provisions of this definition, includes—

“(a) Any estate or interest in any land, including all rights of occupation of land or buildings:

“(b) All buildings, vehicles, plant, equipment, and machinery, and any rights therein:

“(c) All financial reserves, and any rights therein:

“(d) All securities within the meaning of the Securities Act 1978:

“(e) All rights of any kind, including rights under Acts, deeds, agreements, or licences, and any kind of consent granted under the Resource Management Act 1991, and all applications for and objections against applications for such rights:

“(f) Annual revenue (or any proportion thereof) received by a local authority from land vested in the local authority in trust or as an endowment for the purpose of or in relation to the land drainage scheme or water-race scheme; but does not include any interest in any such land:

“‘Scheme liabilities’ means any liabilities of the local authority that were incurred (whether solely or partially) for the purposes of any land drainage scheme or water-race scheme proposed to be transferred under this Part and, without limiting the generality of the foregoing provisions of this definition, includes—

“(a) Liabilities and obligations under any Act or agreement; and

“(b) Deposits and other debt securities within the meaning of the Securities Act 1978; and

“(c) Contingent liabilities:

“‘Scheme owner’ means, in relation to a land drainage scheme or water-race scheme transferred under this Part, any person or group of persons who control that scheme after its transfer:

“‘Scheme user’, in relation to any land drainage scheme or water-race scheme proposed to be transferred, means the occupier, whether solely or jointly with others, of any land served by the land drainage scheme or water-race scheme; and includes the operator of any other drainage system or water supply system that utilises that land drainage scheme or water-race scheme:

“‘Water race’ has the meaning given to that term by section 422 (1):

“‘Water-race area’ means a water-race area constituted under Part XXV:

“‘Water-race scheme’ means all water races relating to a particular water-race system and constructed or established, or deemed to be constructed by a council, under Part XXV.

“517C. **Purposes of this Part**—The purposes of this Part are—

“(a) To enable any land drainage scheme or water-race scheme to be transferred to the ownership and responsibility of the ratepayers served by the scheme where that is the wish of those ratepayers; and

“(b) To ensure that the manner in which any such scheme is transferred protects—

“(i) The interests of all ratepayers served by the scheme; and

“(ii) The public interest in the effective operation of this Act and other Acts by local authorities.

“517D. **Obligation of local authority to facilitate purposes**—(1) Where any local authority that has control of a land drainage scheme or water-race scheme has reasonable grounds to believe that a significant proportion of scheme users may seek the transfer of that scheme under this Part, the local authority must, in relation to that scheme, take all reasonable steps to facilitate the operation of the provisions of this Part.

“(2) Reasonable steps under subsection (1) may include the provision of reasonable assistance to any person appearing to represent or have the confidence of the scheme users in the development of a transfer proposal.

“Transfer Petitions and Transfer Proposals

“517E. **Initiation of transfer**—Subject to section 517F, any person who is a scheme user of a land drainage scheme or water-race scheme may file, at the principal office of the local authority that has control of the scheme,—

“(a) A petition requesting the transfer of the land drainage scheme or water-race scheme to the scheme users; and

“(b) A transfer proposal.

“517F. **Duty of local authority upon receipt of transfer petition and transfer proposal**—(1) No transfer petition or transfer proposal filed under section 517E is of any effect if—

“(a) The number of valid signatures to the transfer petition, is not greater than 50% of the number of separately

rateable properties served by the land drainage scheme or water-race scheme; or

“(b) The transfer proposal is the same or substantially similar to any proposal that has been filed with the local authority within the period of 36 months ending with the date on which the transfer petition is filed with the local authority.

“(2) Where any transfer petition or transfer proposal is of no effect under subsection (1), the local authority must notify the proposer or the proposer’s representative accordingly.

“(3) Subject to subsection (1), where the local authority ascertains that a transfer proposal filed under section 517E does not deal adequately with the matters set out in section 517I, the local authority must return that transfer proposal to the proposer together with a written statement indicating the matters that, in the local authority’s opinion, have not been adequately dealt with in the proposal.

“(4) The return of the transfer proposal to the proposer under subsection (3) does not in any way preclude the proposer from once again filing a transfer petition under section 517E and subsection (1) (b) has effect, in relation the transfer proposal that accompanies any such transfer petition, as if the transfer proposal returned under subsection (3) had never been filed.

“**517G. Signatures to transfer petition**—(1) Subject to this section, every scheme user is entitled to sign the transfer petition filed under section 517E.

“(2) Where there is more than one scheme user in respect of any property served by the land drainage scheme or water-race scheme proposed to be transferred, every such scheme user is entitled to sign a petition requesting the transfer of the land drainage scheme or water-race scheme; but not more than one signature in respect of any such property may be counted for the purpose of assessing the number of valid signatures to the petition.

“(3) For the purposes of this section, and section 517F, land held in more than one title but occupied by the same person or persons and used as a single property is deemed to be one property.

“(4) No person may sign any transfer petition more than once.

“(5) Every scheme user who signs a petition filed under section 517E must state against the scheme user’s signature—

“(a) The scheme user’s name; and

“(b) The address of the property in respect of which the scheme user is entitled by virtue of subsection (1) to sign the petition.

“517H. **Proposer**—Every transfer proposal filed under section 517E must clearly state—

“(a) The name of the proposer; and

“(b) An address at which the proposer or a representative of the proposer can be contacted; and

“(c) Where a representative of the proposer is the person to be contacted, the name of that representative; and

“(d) The grounds on which the proposer claims to be entitled to make the proposal.

“517I. **Contents of transfer proposal**—The transfer proposal must—

“(a) Identify the land drainage scheme or water-race scheme proposed to be transferred, which identification must be accompanied by a plan or other description sufficient to identify the land drainage scheme or water-race scheme; and

“(b) Identify (by reference to the land or property which is served by the scheme and which is occupied by each scheme user) the scheme users to whom the scheme is to be transferred; and

“(c) State whether it is the intention of the scheme users to whom the scheme is to be transferred—

“(i) To have the scheme transferred to themselves as tenants in common; or

“(ii) To have the scheme transferred, by their direction, to a body corporate comprised of those scheme users or acting on their behalf; or

“(iii) To have the scheme transferred, by their direction, to persons appointed by them to hold the scheme in trust on their behalf; and

“(d) Identify the scheme assets and scheme liabilities; and

“(e) Identify the scheme assets and scheme liabilities proposed to be transferred with the scheme; and

“(f) Identify such of the assets identified in paragraph (e) as are, upon transfer of the scheme, to be purchased from the local authority (because they are not held or used by the local authority solely for the purposes of, or in relation to, the scheme to be transferred); and

- “(g) Identify the price proposed to be paid or the method for determining the price that should be paid for the scheme assets identified in paragraph (f); and
- “(h) Propose a procedure for the transfer of such of the scheme assets and scheme liabilities as are proposed to be transferred with the scheme and a timetable for their transfer; and
- “(i) Identify any rights conferred by designations under operative district plans applying to any land relating to the scheme; and
- “(j) Identify any rules or proposed rules in any regional plan or proposed regional plan relating to the scheme; and
- “(k) Identify any resource consents relating to the scheme, including any water permits or discharge permits that have become resource consents under section 386 of the Resource Management Act 1991; and
- “(l) Identify any leases, easements, permits, or rights of any kind in respect of any scheme assets or scheme liabilities.

“517j. **Service of transfer proposal**—The proposer of a transfer proposal filed under section 517E, or the proposer’s representative, must, as soon as practicable after filing the transfer petition and the transfer proposal under that section, serve a copy of the transfer proposal on—

- “(a) Every scheme user who is the operator of a drainage system or water supply system that utilises the scheme to which the transfer proposal relates; and
- “(b) Every other scheme user in relation to the scheme to which the transfer proposal relates; and
- “(c) Every local authority within whose district the scheme to which the transfer proposal relates is wholly or partly situated or which is otherwise likely to be affected by the transfer of that scheme (other than the local authority that has control of that scheme).

“517k. **Right to object to transfer proposal**—Where a transfer proposal is filed under section 517E in relation to any land drainage scheme or water-race scheme,—

- “(a) Any scheme user who is the operator of a drainage system or water supply system that utilises the scheme to which the transfer proposal relates; and
- “(b) Any other scheme user in relation to the scheme to which the transfer proposal relates; and

“(c) Any local authority within whose district the scheme to which the transfer proposal relates is wholly or partly situated or which is otherwise likely to be affected by the transfer of that scheme (including the local authority that has control of that scheme)—

may, in accordance with this Part, object to the transfer proposal.

“517L. **Notice of right to object**—Subject to section 517F (3), every local authority that receives a transfer petition and transfer proposal under section 517E must, as soon as practicable after such receipt, forward—

“(a) To every scheme user who is the operator of a drainage system or water supply system that utilises the scheme to which the transfer proposal relates; and

“(b) To every other scheme user in relation to the scheme to which the transfer proposal relates; and

“(c) To every local authority entitled under section 517k (c) to object to the transfer proposal,—

a notice complying with section 517M.

“517M. **Contents of notice of right to object**—Every notice given under section 517L must—

“(a) Give notice of the local authority’s receipt of the transfer petition and transfer proposal under section 517E; and

“(b) Give notice of the obligations of the proposer under section 517J, and of the address at which the proposer or a representative of the proposer can be contacted; and

“(c) Invite any person (being a person entitled under section 517k to object to the transfer proposal) who wishes to object to the transfer proposal to lodge written objections to the proposed transfer of the land drainage scheme or water-race scheme identified in the notice or the transfer proposal prepared in respect of any such scheme, at the principal office of the local authority that has control of that land drainage scheme or water-race scheme, on or before a date specified in the notice, which date must be no earlier than 6 weeks after the date of that notice; and

“(d) Advise that, where objections are received from—

“(i) A local authority entitled under section 517k (c) to object to the transfer proposal; or

“(ii) The operator of any other drainage system or water supply system that utilises the scheme; or

“(iii) Scheme users who are occupiers of not less than 5% of the number of separately rateable properties served by the land drainage scheme or water-race scheme,—

all the objections received by the local authority will be forwarded to the Commission for determination in accordance with section 517T:

“(e) Advise that, where a local authority receives an objection under paragraph (d) (i) or paragraph (d) (ii), any objections received by the local authority under paragraph (d) (iii) will also be forwarded to the Commission, notwithstanding that those objections are from scheme users who are occupiers of less than 5% of the number of separately rateable properties served by the land drainage scheme or water-race scheme.

“517N. **Lodging of objections**—Every objection under section 517K—

“(a) Must be made in writing; and

“(b) Must, within the time stipulated in the notice issued under section 517M, be lodged with the principal administrative officer of the local authority; and

“(c) Must state the basis on which the person making the objection is entitled to do so under section 517K; and

“(d) Must, where the person making the objection is a scheme user who is the operator of a drainage system or water supply system that utilises the scheme to which the transfer proposal relates,—

“(i) Describe that drainage system or water supply system; and

“(ii) State, against the scheme user’s signature, the scheme user’s name; and

“(e) Must, where the person making the objection is a scheme user (other than a scheme user to whom paragraph (d) applies), state against the scheme user’s signature—

“(i) The scheme user’s name; and

“(ii) The address of the property in respect of which the scheme user is entitled to lodge the objection; and

“(f) Must specify the grounds on which the objection is lodged, which grounds must be stated with

sufficient particularity as to give full advice to both the Local Government Commission and other parties of the issues involved.

“517O. Service of copies of objections—Every person who lodges an objection under section 517k must, either before or immediately after the lodging of the objection, serve a copy of the objection either personally or by post on the proposer of the transfer or the proposer’s representative.

“517P. Notification by local authority of receipt of objections—Within 7 days after the closing date for the lodging of written objections under section 517k, the local authority—

“(a) Must ascertain whether it has received any written objections from—

“(i) Any local authority entitled under section 517k (c) to object to the transfer proposal; or

“(ii) The operator of any other drainage system or water supply system that utilises the scheme; or

“(iii) Scheme users who are occupiers of not less than 5% of the number of separately rateable properties served by the land drainage scheme or water-race scheme; and

“(b) Must advise the proposer and all other scheme users and every local authority within whose district the scheme is wholly or partly situated or which is otherwise likely to be affected by the proposed transfer, whether or not, as a result of its finding under paragraph (a), the local authority is required by section 517s to forward to the Commission the transfer proposal and every objection received by the local authority.

“517Q. Procedure where transfer proposal not required to be forwarded to Commission—Where the local authority finds, under section 517P, that it is not required by section 517s to forward to the Commission the transfer proposal and every objection received by the local authority, the transfer proposal becomes, as from the date of the local authority’s finding under section 517P (a), a transfer plan and the local authority must, as soon as practicable, give effect to that transfer plan.

“517R. Obligation of local authority to effect transfer—Where a transfer proposal becomes a transfer plan under section 517Q, the local authority in whom the land drainage

scheme or water-race scheme is vested, must transfer the land drainage scheme or water-race scheme—

“(a) To the scheme users of the land drainage scheme or water-race scheme as tenants in common; or

“(b) By direction of the scheme users of the land drainage scheme or water-race scheme,—

“(i) To any body corporate comprised of or acting on behalf of all the scheme users; or

“(ii) Where the scheme users of the land drainage scheme or water-race scheme have appointed any persons to hold the scheme in trust on behalf of the scheme users, to those persons as joint tenants.

“517s. **Procedure on receipt of objections**—(1) The local authority must, as soon as is practicable upon receipt by it of—

“(a) An objection from a local authority entitled under section 517k (c) to object to the transfer proposal; or

“(b) An objection from any scheme user who is the operator of a drainage system or water supply system that utilises the scheme; or

“(c) Objections from scheme users who are occupiers of not less than 5% of the number of separately rateable properties served by the land drainage scheme or water-race scheme,—

forward to the Commission the copies and information specified in subsection (2).

“(2) The copies and information required by subsection (1) to be forwarded to the Commission comprise—

“(a) A copy of the transfer proposal; and

“(b) A copy of every objection received by the local authority under section 517k; and

“(c) Such information concerning the characteristics of the land drainage scheme or water-race scheme proposed to be transferred as is necessary for the purposes of section 517t.

“517t. **Duty of Commission to consider objections**—(1) Where the copy of the transfer proposal and the copies of the other documents are forwarded to the Commission under section 517s, the Commission—

“(a) Must ensure that the proposer or a representative of the proposer, and any person who has lodged a written objection under section 517k, and any other person or group of persons the Commission thinks fit, is given a reasonable opportunity to be heard by the Commission; and

“(b) Must consider, having regard to the criteria set out in section 517U and such other matters as the Commission considers on reasonable grounds to be relevant,—

“(i) The transfer proposal; and

“(ii) Each objection received; and

“(iii) All other relevant information presented to or obtained by the Commission.

“(2) Where all objections to a transfer proposal have been considered and any further investigations or inquiries or negotiations considered by the Commission to be necessary or desirable have been made or carried out, the Commission must determine whether the transfer of the scheme is to proceed or not.

“(3) Where the Commission determines under subsection (2) that the proposed transfer is to proceed, the Commission may approve the transfer proposal with such modifications, if any, as the Commission thinks fit, being modifications which result from the objections made in relation to the transfer proposal or from any investigations, inquiries, or negotiations made or carried out in relation to that transfer proposal.

“(4) The determination of the Commission under subsections (2) and (3) is final.

“517U. **Relevant criteria**—Where the Commission considers any transfer proposal under section 517T, the relevant criteria, in relation to any such consideration, are—

“(a) The purposes of local government as set out in section 37k; and

“(b) The purposes of this Part as set out in section 517c; and

“(c) The extent to which the transfer of the scheme would impact upon, or be prejudicial to, the operation of any other drainage system or water supply system that utilises the scheme; and

“(d) The extent to which the transfer of the scheme would be oppressive, unfairly discriminatory, or unfairly prejudicial to any scheme user or particular scheme users; and

“(e) The extent to which the transfer of the scheme would impact upon the functions, powers, and duties of any local authority under the Local Government Act 1974, the Resource Management Act 1991, the Soil Conservation and Rivers Control Act 1941, or any other Act.

“517v. Notice of Commission’s determination—

(1) Where the Commission makes a determination under section 517T, the Commission must as soon as practicable after making that determination,—

“(a) Forward a copy of that determination, together with a statement explaining the Commission’s reasons for the determination to the local authority concerned and to the proposer or the proposer’s representative; and

“(b) Give notice of the determination and explanatory statement to all scheme users and local authorities affected by the proposed transfer; and

“(c) Make a copy of the determination and a copy of the explanatory statement available for public inspection at the office of the Commission.

“(2) The local authority concerned must make a copy of the determination and a copy of the explanatory statement available for public inspection at its office.

“517w. Modification of support for transfer proposal—

(1) This section applies to any transfer proposal approved with modifications by the Commission under section 517T (3).

“(2) Where a local authority receives under section 517v (1) a copy of a determination by which a transfer proposal is approved with modifications by the Commission, the local authority must forward to every scheme user a notice which—

“(a) Gives notice that the Local Government Commission has modified the transfer proposal; and

“(b) States the Commission’s obligations under paragraphs (b) and (c) of section 517v (1) and the local authority’s obligations under section 517v (2); and

“(c) States that any scheme user who signed the transfer petition under section 517G in respect of the transfer proposal may, by written application received by the local authority before a date specified in the notice, being a date not less than 4 weeks nor more than 6 weeks after the date of the notice, have the scheme user’s signature deleted from the petition; and

“(d) States that any scheme user who was entitled under section 517G to sign the transfer petition in respect of the transfer proposal but did not sign that petition may, by written application received by the local authority before the date specified under

paragraph (c), have the scheme user's support for the petition recorded; and

“(e) States the local authority's obligations under subsection (3).

“(3) Within 7 days after the date specified under subsection (2) (c), the local authority must determine whether—

“(a) After deleting any signature that is the subject of an application under subsection (2) (c); and

“(b) After, counting, as if it were a signature to the petition, any support for the petition recorded in accordance with an application under subsection (2) (d),—

the number of valid signatures on the transfer petition is equal to or greater than 75% of the number of separately rateable properties served by the land drainage scheme or water-race scheme.

“(4) Where the local authority determines under subsection (3) that the number of valid signatures on the transfer petition is not equal to or greater than 75% of the number of separately rateable properties served by the land drainage scheme or water-race scheme, the local authority must notify every scheme user that the number of valid signatures on the transfer petition is insufficient and that the transfer proposal is not to proceed.

“*Transfer Plan*

“517x. **Procedure after determination**—(1) Where the Commission determines under section 517T (2) that the transfer of the land drainage scheme or water-race scheme is to proceed (and does not exercise its power, under section 517T (3) to approve the transfer proposal with modifications), the transfer proposal becomes, as from the date of the Commission's determination, a transfer plan and the local authority must, as soon as practicable, give effect to that transfer plan.

“(2) Where, in relation to a transfer proposal to which section 517w applies, the local authority determines, under section 517w (3), that the number of valid signatures on the transfer petition is equal to or greater than 75% of the number of separately rateable properties served by the land drainage scheme or water-race scheme, the modified transfer proposal becomes, as from the date of the local authority's determination, a transfer plan and the local authority must, as soon as practicable, give effect to the transfer plan.

“517Y. **Obligation of local authority to effect transfer**— Where a transfer proposal becomes a transfer plan under section 517X, the local authority in whom the land drainage scheme or water-race scheme is vested, must transfer the land drainage scheme or water-race scheme—

“(a) To the scheme users of the land drainage scheme or water-race scheme as tenants in common; or

“(b) By direction of the scheme users of the land drainage scheme or water-race scheme,—

“(i) To any body corporate comprised of or acting on behalf of the scheme users; or

“(ii) Where the scheme users of the land drainage scheme or water-race scheme have appointed any person to hold the scheme in trust on behalf of the scheme users, to those persons as joint tenants.

“Implementation of Transfer Plan

“517Z. **Transfer by local authority of scheme assets and scheme liabilities**—(1) Notwithstanding any Act, rule of law, or agreement, where a transfer proposal becomes a transfer plan under section 517Q or section 517X and that plan is to be given effect to by the transfer of a land drainage scheme or water-race scheme, the local authority must on the transfer day—

“(a) Transfer to the person or group of persons to whom the scheme is transferred, the scheme assets and scheme liabilities; and

“(b) Vest in the person or group of persons to whom the scheme is transferred any rights conferred by designations under district plans applying to any land transferred pursuant to this Part; and

“(c) Grant to the person or group of persons to whom the scheme is transferred leases, easements, permits, consents, or rights of any kind in respect of any scheme assets or scheme liabilities as provided for by the transfer proposal, the amended transfer proposal, or the Commission’s determination, as the case may be.

“(2) Where a local authority continues, on behalf of scheme users, to collect revenue from land vested in the local authority in trust or as an endowment for the purposes of or in relation to a land drainage scheme or water-race scheme transferred under this Part, the local authority is entitled to deduct from such revenue all reasonable costs and expenses incurred in the collection of such revenue.

“(3) Where any designation is, under subsection (1)(b) vested in a person or group of persons, that person or group of persons may, within the period of 2 years beginning on the transfer day, apply under section 167 of the Resource Management Act 1991 for approval as a requiring authority and is, until that application is disposed of or until that period of 2 years expires, whichever is the sooner, deemed to be a requiring authority within the meaning of that Act.

“(4) Scheme assets that are fixed to, or are under or over, any land may be transferred under this Part, whether or not any interest in the land is also transferred. Where any such asset is so transferred, the asset and the land are to be regarded as separate assets each capable of separate ownership.

“(5) Any scheme asset or scheme liability may be transferred under this Part, whether or not any Act or agreement relating to the asset or liability permits such transfer or requires any consent to such a transfer.

“(6) Where a transfer takes place pursuant to this section and the transfer is registrable, the person responsible for keeping the register must register the transfer forthwith after written notice of the transfer is received by him or her from any person authorised for that purpose by the local authority.

“517ZA. Further provisions relating to transfer of scheme assets and scheme liabilities—(1) Nothing in this Part—

“(a) Is to be regarded as placing the local authority, the scheme owner, or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or

“(b) Is to be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or

“(c) Is to be regarded as placing the local authority, the scheme owner, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or

“(d) Releases any surety wholly or in part from all or any obligation; or

“(e) Invalidates or discharges any contract or security.

“(2) Where a scheme asset or scheme liability is transferred to the scheme owner under section 517Z, the local authority

remains liable to any third party as if the asset or liability had not been so transferred and in any such case the scheme owner must indemnify the local authority in respect of any liability arising under this situation.

“(3) Where—

“(a) Any scheme assets held or used by a local authority are held or used for the purposes of, or in relation to, any other land drainage scheme or water-race scheme vested in the local authority; or

“(b) Any scheme liabilities are incurred by a local authority for the purposes of any other land drainage scheme or water-race scheme vested in the local authority,—

the scheme owner must indemnify the local authority for that proportion of the liability which represents the share of the land drainage scheme or water-race scheme in any such scheme asset or scheme liability.

“(4) Any satisfaction or performance by the scheme owners in respect of the asset or liability is deemed to be also satisfaction or performance by the local authority.

“(5) Any satisfaction or performance in respect of the asset or liability by any third party to the benefit of the scheme owner is deemed to be also to the benefit of the local authority.

“517ZB. **Rates and charges payable for proportionate part of year in certain circumstances**—(1) Where in any year a land drainage scheme or water-race scheme is transferred under this Part before a local authority prescribes any charge or makes any rate for that year in respect of the scheme, any expenditure incurred by the local authority in respect of the scheme for the period beginning on 1 July in that year and ending with the transfer date of the scheme is recoverable by the local authority upon the transfer of the scheme, as a debt owing to the local authority by the scheme owner.

“(2) Where in any year a land drainage scheme or water-race scheme is transferred under this Part, after any charge or rate in respect of the scheme has been prescribed or made for that year, the local authority may levy and collect the charge or rate, but such proportion of the charge or rate as was levied for the purpose of the scheme and was not expended by the local authority before the transfer of the scheme, must be paid by the local authority to the scheme owner upon the transfer of the scheme.

“517ZC. Rights of entry—(1) Subject to subsections (2) to (6), any scheme owner may enter upon land (including land owned by the Crown) for the purpose of gaining access to any land drainage scheme or water-race scheme owned by the scheme owner and may perform any act or operation necessary for the purpose of operating, inspecting, maintaining, or repairing any such scheme.

“(2) Subject to subsection (3), the power to enter upon land given by subsection (1) is subject to the following conditions:

“(a) Entry to the land may only be made by the scheme owner or any other person authorised by the scheme owner in writing, either specifically or as a member of a class so authorised by the scheme owner:

“(b) Reasonable notice of the intention to enter must be given:

“(c) Entry may be made only at reasonable times:

“(d) The person entering must carry evidence of his or her authority and must produce such evidence on initial entry or if required to do so.

“(3) Nothing in subsection (2) applies where the entry is necessary in circumstances of probable danger to life or property.

“(4) In any situation to which subsection (3) applies, notice of the entry must be given as soon as is practicable, whether before or after the entry is made.

“(5) A person who enters upon any land in the exercise of the power given by subsection (1) must take all reasonable steps—

“(a) To avoid or minimise the disturbance of any stock or poultry on the land; and

“(b) To avoid or minimise any damage to or destruction of any fences, buildings, trees, or other property of any kind, other than property belonging to the scheme owner.

“(6) The scheme owner is liable to repair, or pay compensation for, any damage or loss suffered by any person as a result of any exercise of the power of entry given by subsection (1).

Cf. 1987, No. 116, s. 12 (1), (3); 1988, No. 164, s. 14 (1)

“517ZD. Registration of rights—(1) As soon as is reasonably practicable after the transfer of a land drainage scheme or water-race scheme under this Part, the principal administrative officer of the local authority must furnish to the

scheme owner a certificate that the rights of entry upon land referred to in section 517ZC (1) apply to land specified in the certificate.

“(2) The scheme owner must, upon receipt of the certificate, lodge it, together with such plans, if any, as the Registrar-General of Land requires, in the Land Registry Office for the district in which the land is situated.

“(3) The Registrar-General of Land upon receipt of the certificate referred to in subsection (1) must,—

“(a) If the land affected or any part of it is not subject to the Land Transfer Act 1952, cause an entry of the particulars of the certificate to be made under the proper heading or title in the index book of the Deeds Register Office; or

“(b) If the land affected or any part of it is subject to the Land Transfer Act 1952, register the particulars of the certificate against the title to the land or part so subject.

“(4) If the land affected by the certificate to which this section applies or any part of it is not subject to the Land Transfer Act 1952, and dealings with the land or part not so subject are not registrable under the Deeds Registration Act 1908, the person in whose favour the right exists must lodge a true copy of the certificate and memorandum in the office of the Chief Surveyor; and the Chief Surveyor must note the existence of the certificate on plans and records of the land district.

“(5) No action lies against the Crown or any other person under Part XI of the Land Transfer Act 1952 by reason of any certificate registered under this section not indicating the true position or course of those parts of the land drainage scheme or water-race scheme to which the right relates.

“(6) Notwithstanding any enactment or rule of law to the contrary, any certificate registered under this section is deemed to be binding on any registered proprietor of an estate in fee simple or leasehold of, or on any registered licensee of, and on every person with a prior or subsequent interest registered against, the land or any interest in the land affected by the certificate.

“(7) Without limiting the provisions of this section, any right referred to in any certificate registered by the Registrar-General of Land under this section may be transferred, by a memorandum of transfer to be registered under the Land Transfer Act 1952, to any person or group of persons to whom

any land drainage scheme or water-race scheme has been transferred.

“(8) On and after the commencement of this section, nothing in—

“(a) Part V of the Public Works Act 1981; or

“(b) Section 708 of this Act; or

“(c) Section 29 of the Land Drainage Act 1908; or

“(d) Section 10 of the Rangitaiki Land Drainage Act 1956,—applies to, or in respect of, any right to which subsection (1) applies.

“(9) Nothing in this section prejudices or affects any claim for compensation made before the commencement of this section under any of the Acts specified in subsection (8).

Cf. 1990, No. 52, s. 4 (6)(c), (7), (10)–(13)

517ZE. Transfer of existing easements, etc—(1) Where a land drainage scheme or water-race scheme is transferred by a local authority under this Part, the benefit of any existing easement, agreement, or right over or in respect of land relating to land drainage works, drainage channels, water races, or other facilities, for the purposes of the scheme, is deemed to be transferred to the person or group of persons to whom the scheme is transferred, notwithstanding that the easement, agreement, or right may not have been registered.

“(2) In respect of any land to which subsection (1) applies, the local authority must, at the request of the scheme owner, by notice registered in accordance with this section against the title of the land, indicate the existence of the relevant easement, agreement, or right and the fact that it has been transferred to the scheme owner pursuant to subsection (1).

“(3) Every such notice must—

“(a) Be signed by the local authority; and

“(b) Specify the parcel of land affected; and

“(c) Have endorsed on the notice, or refer to, a diagram or plan showing the position or course of the land drainage works, drainage channels, water race, or other facility to which the easement, agreement, or right relates; and

“(d) Be lodged by the local authority in the Land Registry Office for the district in which the land affected is situated and registered by the Registrar-General of Land against the title to that land.

“(4) Notwithstanding anything in subsection (3)(c), where it is not practicable to show on the diagram or plan the true position or course of the land drainage works, drainage

channels, water race, or other facilities to which the easement, agreement, or right relates, the notice registered in accordance with this section must indicate the position or course as nearly as possible, and, until the contrary is proved, the position or course so indicated is deemed to be the true position or course.

“(5) Where any such notice has endorsed on it or refers to a diagram or plan to which subsection (4) applies and it is subsequently shown by a plan deposited by the Registrar-General of Land that the true position or course of the land drainage works, drainage channels, water race, or other facility differs from the position or course shown on the first-mentioned diagram or plan, the Registrar-General of Land must endorse on the notice and on any other appropriate titles, plans, or records a reference to the deposited plan; and the notice is thereupon deemed to have referred to the deposited plan from the date on which it was signed.

“(6) No action lies against the Crown under Part XI of the Land Transfer Act 1952 by reason of any notice registered under this section not indicating the true position or course of any land drainage works, drainage channel, or water race.

“(7) Notwithstanding any enactment or rule of law to the contrary, any notice registered under this section is deemed to be binding on any registered proprietor of an estate in fee simple or leasehold of, or on any registered licensee of, and on every person with a prior or subsequent interest registered against, the land or any interest in the land affected by the notice.

“(8) Any easement, agreement, or right referred to in any notice registered under this section may be transferred, by a memorandum of transfer registered under the Land Transfer Act 1952, to any person or group of persons to whom any land drainage scheme or water-race scheme is subsequently sold or otherwise disposed of.

Cf. 1990, No. 52, s. 5

“517ZF. **Transfer of water permits**—(1) Where a land drainage scheme or water-race scheme is transferred by a local authority under this Part, any existing permit held by the local authority to dam any river or stream or to divert, take, use, or discharge water for the purposes of the scheme is deemed to be transferred to the person to whom, or the group of persons to which, the scheme is transferred.

“(2) Every permit so transferred continues to be subject to the same terms and conditions as those to which it was subject immediately before the date of transfer.

“(3) Every permit to which this section applies is subject to the provisions of any other enactment relating to it.

Cf. 1990, No. 52, s. 7; 1991, No. 69, s. 362

“517ZG. **Transfer of land**—(1) Nothing in sections 40 to 42 of the Public Works Act 1981 applies to the transfer by the local authority of any land or interest in land under this Part so long as the land or interest in land continues to be used for the purposes of a land drainage scheme or water-race scheme, but, if all or any part of the land or interest in land is no longer required for such purposes, sections 40 and 41 of that Act apply to the land or interest no longer so required as if the owner of the land or interest were the local authority and the land or interest had not been transferred under this Part.

“(2) The Registrar-General of Land must endorse on every certificate of title transferred to any person or group of persons under this Part, the effect of subsection (1).

Cf. 1990, No. 52, ss. 9 (4), 10 (2)

“517ZH. **Section 11 and Part X of Resource Management Act 1991 and Part XXI of this Act not to apply**—Section 11 and Part X of the Resource Management Act 1991 and Part XXI of this Act do not apply to or in respect of the transfer of any land or interest in land under this Part of this Act nor to any subdivision required in respect of any such transfer.

Cf. 1990, No. 52, s. 12; 1991, No. 69, s. 362

“517ZI. **Activity permitted as of right**—For the purposes of section 375 (1) (a) (iii) of the Resource Management Act 1991 and for the avoidance of doubt, where any land drainage scheme or water-race scheme is transferred under this Part, any use for drainage purposes or water-race purposes of the land upon which the land drainage scheme or water-race scheme is situated is deemed to be a permitted activity within the meaning of that Act, and section 375 of that Act applies accordingly.

Cf. 1990, No. 52, s. 13; 1991, No. 69, s. 362

“517ZJ. **Revocation of special orders constituting drainage areas and water-race areas**—(1) On the transfer of any land drainage scheme or water-race scheme under this Part,—

“(a) That part of every special order in force in relation to that scheme and made under section 423 or section 504 or section 505, or the corresponding provision of any former enactment relating to land

drainage or water races, is deemed to be revoked; and

“(b) That part of every drainage district (being a drainage district that is deemed to be a drainage area constituted under Part XXIX) that relates to the scheme is deemed to be excluded from that drainage area; and

“(c) That part of every water-race district (being a water-race district that is deemed to be a water-race area constituted under Part XXV) that relates to that scheme is deemed to be excluded from that water-race area; and

“(d) That part of every irrigation district (being an irrigation district that is deemed to be a water-race area constituted under Part XXV) that relates to that scheme is deemed to be excluded from that water-race area.

“(2) A local authority must by special order alter the boundaries of any drainage area or water-race area to such extent as is necessary to reflect any revocation effected, or exclusion deemed to have been effected, by subsection (1).

“517ZK. **Power of local authority to enter into contracts with scheme owners**—Subject to Part XVI A, a local authority may enter into a contract with the scheme owner of any land drainage scheme or water-race scheme to undertake all or any of the following, namely, the planning, implementation, operation, and maintenance of that land drainage scheme or water-race scheme.

“517ZL. **Power to repair or maintain land drainage schemes and water races**—If a land drainage scheme or water-race scheme is not repaired or maintained in a due state of efficiency, the owners or occupiers for the time being of the land through, on, or between which the land drainage scheme or water-race scheme is situated may, after giving 7 clear days notice to the scheme owner of their intention to do so, repair or otherwise maintain the same in a due state of efficiency, and recover in a summary manner from the scheme owner a fair and equitable proportion of the expenses incurred by them in so doing.

“517ZM. **Power of territorial authority to reconstitute land drainage or water-race areas**—(1) A territorial authority may, upon receipt of a petition signed by the occupiers of a majority of the separately rateable properties served by a land drainage scheme or water-race scheme, and

with the agreement of the scheme owner, by special order, declare the whole or any defined part of the district in which the land drainage scheme or water-race scheme is situated to be constituted—

“(a) A drainage area for the purpose of land drainage works for the drainage of land in the area; or

“(b) A water-race area for the purpose of the construction and maintenance therein of water races and the supply of water therefrom.

“(2) Part XXIX applies to any drainage area constituted under subsection (1).

“(3) Part XXV applies to any water-race area constituted under subsection (1).

“(4) Upon a drainage area or water-race area being constituted under subsection (1),—

“(a) The drainage channels and land drainage works relating to the land drainage scheme vest in the territorial authority; and

“(b) The water races relating to the water-race scheme vest in the territorial authority.”

This Act is administered in the Department of Internal Affairs.
