

LOCAL GOVERNMENT LAW REFORM

AS REPORTED FROM THE INTERNAL AFFAIRS AND LOCAL
GOVERNMENT COMMITTEE

COMMENTARY

Recommendation

The Internal Affairs and Local Government Committee has examined the Local Government Law Reform Bill and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Local Government Law Reform Bill was referred to the Internal Affairs and Local Government Committee on 6 December 1994. The bill was divided into seven separate bills; clauses 1, 2, and 5 to 14 of the original bill constitute the present bill. The closing date for submissions was 8 March 1995. The committee received and considered 23 submissions from organisations and other interested groups and individuals. Seventeen submissions were heard orally. One hour and nine minutes was spent on the hearing of evidence and consideration took six hours and 40 minutes.

Advice was received from the Department of Internal Affairs.

This commentary sets out the details of the committee's consideration of the bill and the major issues addressed by the committee.

Background

Introduction

The residual clauses of the Local Government Law Reform Bill amend the Local Government Act 1974. These clauses enable land drainage schemes and water-race schemes to be transferred from local authorities to users of those schemes.

Examination of the bill was delayed by litigation in the High Court of New Zealand. The judgment of the court was delivered in *Begley v Bay of Plenty Regional Council* (Morris J, 5 September 1995, High Court Rotorua, M151/92). This decision was appealed by the defendant. The judgment of the New Zealand Court

of Appeal was delivered in *Bay of Plenty Regional Council v Begley* (Thomas, Barker and McGechan JJ, 13 May 1997, Court of Appeal, CA 260/95).

Dividing the bill

On 1 June 1995 the House gave the Internal Affairs and Local Government Committee authority to divide the Local Government Law Reform Bill into such separate bills as it thought desirable and to report the bills separately to the House.

- Part VII (clauses 129 to 162) and the Ninth Schedule were divided from the bill to form the Chatham Islands Council Bill, which was reported to the House on 20 July 1995.
- Clauses 18 to 21 were divided from the bill to form the Local Government Amendment Bill (No. 4), relating to the Auckland Regional Services Trust, which was reported to the House on 19 October 1995.
- Parts II to V (clauses 33 to 118) and the Sixth, Seventh and Eighth Schedules formed the Dog Control Bill, which was reported to the House on 5 December 1995.
- Clauses 3, 4, 22 to 32 and the First, Second, Third, Fourth and Fifth Schedules formed the Local Government Amendment Bill (No. 5), relating to financial management of local authorities, which was reported to the House on 19 December 1995.
- Clauses 15 to 17 formed the Local Government Amendment Bill (No. 7), relating to waste management, which was reported to the House on 1 May 1996.
- Part VI (clauses 119 to 128) formed the Rating Powers Amendment Bill, which was reported to the House on 1 May 1996.

Change of Title, Short Title and commencement

The remaining 12 clauses of the Local Government Law Reform Bill, namely clauses 1, 2, and 5 to 14, were carried over to this Parliament. As only those clauses remain alive in the bill, we recommend that its title and short title be changed and that the bill become known as the Local Government Amendment Bill (No. 7). We recommend that the bill come into force on the day after the date on which the bill receives the Royal assent.

Purpose of the bill

The bill seeks to allow the transfer of land drainage and water-race schemes from local authorities to scheme users where the transfer has the support of a significant majority of those scheme users. The principle of the bill is based on the Irrigation Schemes Act 1990.

The bill seeks to provide workable and fair procedures for the initiation and negotiation of proposals between scheme users and local authorities, the equitable identification of assets and rights to be transferred in conjunction with the land drainage or water-race scheme, the registration of informed support for developed proposals and rights of objection for local authorities or scheme users opposing the transfer. The bill proposes that objections be determined by the Local Government Commission.

The bill proposes that scheme users assuming ownership and responsibility for land drainage and water race schemes retain some of the statutory powers of local authorities. The collection of financial contributions, enforcement of operational requirements, and other management issues will have to be agreed to by agreements and contracts with participating scheme users.

Committee's considerations and recommended amendments

Initiation of transfer proposal

We discussed amending the bill to include provision for a negotiating team to be appointed at a public meeting of which all scheme users have been notified as a way of initiating the process of preparing and negotiating a transfer proposal. The department advised against including a prescriptive process for the appointment of a negotiating team or conferring any special status or rights upon such a team, because of the wide range of contingencies that would then need to be legislated for.

We recommend the inclusion of a more general and purpose-oriented provision recognising the need for discussion and negotiation before a transfer proposal is completed and formally lodged with the local authority. Previously, the bill dealt with only those formal procedures which commence with lodging the proposal. We also recommend a general obligation for local authorities to participate positively in the development and negotiation of transfer proposal deals. These objectives are reflected in the proposed new sections 517C and 517D.

Provision of information for transfer proposal

We considered a proposal that the local authority be required to provide current and historical information relating to financial and other details of the scheme. We do not recommend the adoption of such a proposal. Sufficient financial and administrative information is publicly available under the Local Government Act 1974 and the Local Government Official Information and Meetings Act 1983.

Negotiation of transfer proposal

We considered a proposal for the local authority to be required to "negotiate in good faith" with scheme users. We were advised that the imposition of a requirement to that effect would be both inappropriate and unenforceable, in that what would constitute good faith would vary enormously from situation to situation, and would reflect a highly subjective judgment. We accept this advice and do not recommend the imposition of such a requirement. It should be noted, however, that such an expectation is implied in general terms by the provisions in proposed new sections 517C and 517D.

Means of support for transfer proposal

We considered two alternatives to the requirement that the number of signatures must, if the proposal is to proceed, represent at least 75 percent of the number of separately rateable properties served by the scheme. The first alternative involved replacing the petition requirement with a postal ballot of scheme users, with a simple majority of those voting being sufficient for the scheme to proceed. The second alternative involved replacing the petition requirement with provision for the decision to be made by majority at a properly constituted meeting of scheme users.

We consider that a petition is the most efficient and cost-effective means of measuring support.

Degree of support for transfer proposal

The bill as introduced required, as a threshold of support for a proposal to transfer a scheme, signatures representing at least 75 percent of the number of separately rateable properties served by the scheme. Some submissions argued that this was too high. We considered different options concerning the proportion of scheme users required to support a proposal in order for the process to continue and agreed that an initial threshold of more than 50 percent should be

adopted. The threshold of more than 50 percent is designed to encourage the initiation of the procedure. However, where the proposal is referred to the Local Government Commission, there is an opportunity for objectors to have their say about the transfer. In this situation, where the Commission modifies a proposal, a threshold of at least 75 percent support is required before the transfer proposal can proceed. We recommend that the initial threshold be reduced from at least 75 percent to more than 50 percent because of the safeguard provided by this two stage process in combination with a greater emphasis on the Commission resolving any problems with the transfer.

Participation in decision on transfer proposal

We considered issues arising in relation to situations where the meaning of “scheme user” may be unclear. These include where several properties are occupied by the same person or persons, either where there is one property held in two or more titles or where there are multiple separate properties; where several persons occupy one property; and where a person occupies one property jointly with one person, and another property jointly with another or others.

We do not support submissions that the impact of the support of scheme users should vary according to the size, in terms of either value or area, of their properties. We recommend amendments to section 517C which relates to signatures to the transfer petition to clarify several issues. Properties held in multiple titles should not enjoy greater property rights than properties held under one title. Multiple properties that are contiguous and used for one purpose should be treated as one property for the purposes of entitlements to support or object to a proposal. Separate entitlements should apply to wholly separate properties, subject to the principle that no person shall have more than one entitlement. We consider there should be a maximum of one vote or signature per property, regardless of the number of people who jointly own or occupy the property, as provided for in the bill as introduced. Where a person occupies one property jointly with one person, and another property with another or others, each property should confer a voting entitlement, subject to no person having multiple entitlements.

Reference of objections to Local Government Commission

We consider it is appropriate that objections, especially those relating to impact on other local government functions, should be referred to and determined by the Local Government Commission. We do not recommend replacing this process with provision for resolution by negotiation or arbitration or both. Some submissions expressed concern with the role of the Local Government Commission in resolving objections. We therefore recommend the insertion of new section 517C expressly stating that the purpose of the legislation is to enable transfers to occur, and the inclusion of a reference to this provision amongst the criteria to be considered by the Commission, specified in section 517U.

Consideration of modifications to the scheme by Local Government Commission

A number of submissions suggested that, where the terms of a transfer proposal have been modified by the Local Government Commission, there should be an opportunity for the scheme users to reconsider whether they wish to proceed with the transfer in light of the modification.

We recommend the bill include provision for scheme users to withdraw support from a transfer proposal which has been modified by the Local Government Commission. A process to allow this is recommended for insertion as new section 517w. The proposed new section also allows scheme users who had not supported

the original proposal to add their support after such modification. At the end of the period for removal or addition of support, the number of supporters will again be assessed against the required proportion to determine if the transfer will proceed. For the proposal to proceed, there needs to be at least 75 percent support from properties in the scheme.

Arterial and regional drains

Submissions were received from local authorities advocating the exclusion of arterial drains from schemes being returned to users, having regard to the reliance of other schemes on those drains. It was submitted that the bill should define regional and arterial drains and exclude them from any transfer. We considered that amendments were necessary to safeguard the interests of other scheme users in the event that the ownership of a scheme on which their scheme is dependent is to be transferred. We do not, however, support submissions seeking the exclusion of regional and arterial drains from schemes to be transferred.

We recommend that section 517K be amended to give a right of objection to the operator of any other scheme which is dependent on any part of the scheme to be transferred; that sections 517P and 517S be amended to ensure that any such objection is sufficient to cause referral to the Local Government Commission; and that section 517U be amended to require the Local Government Commission to consider the impact of the proposed transfer on dependent schemes.

Ownership of assets

The 1997 decision of the New Zealand Court of Appeal in *Bay of Plenty Regional Council v Begley* held that fixed drainage scheme assets (for example, buildings and dams) are the property of the owner of the land on which they are situated. This raises the issue of how scheme users who take over a scheme can ensure the continued operation and maintenance of assets without the statutory powers of local authorities. We do not recommend altering the bill specifically in response to the judgment of the Court of Appeal. Instead, it would be the responsibility of those promoting a transfer proposal to take whatever steps they consider necessary in relation to scheme assets in private ownership.

Rights of entry

We considered the issue of the rights of scheme users to enter property for the purposes of inspecting, maintaining or repairing a land drainage scheme or water-race scheme. In particular, we considered whether scheme users should have a statutory power of entry and, if so, whether the bill should impose a duty of care and an obligation to compensate for any damage caused. We were advised that, without explicit rights of entry, it might be possible for an individual land owner to hold all other scheme users "to ransom". We recommend that the statutory rights of entry referred to in section 517ZC be retained. The department advised us that, although matters of duty of care and liability are arguably already covered by general law, inclusion of such matters in the bill serves to emphasise and clarify the duty owed to scheme users. We therefore recommend that scheme users be subject to a duty of care and therefore to an obligation to compensate for damage.

Transfer of endowment land

We recommend that the provision that provides special procedures for the transfer of endowment land be omitted. We were advised that the inclusion in the bill of this provision (which was to have become section 517X of the Local Government Act 1974) was an error because it was never intended that the title to

endowment land should be transferred, although the revenue from it should be. This intention is reflected in paragraph (f) of the definition of “scheme asset” in section 517B; section 517z(2) provides for the collection of revenue from such land by the local authority and its payment to scheme users.

Rural water supply

We considered whether the bill should also make provision for the transfer of rural water supply. We are aware of dissatisfaction with local authority administration of some rural water supplies that is similar to the concerns that gave rise to this bill. However, we were advised that the inclusion of such provisions in the present bill would be inappropriate in that it would extend the bill beyond its original scope. We believe comment is required from a wider range of people than made submissions on this bill. We note that the question of rural water supply is being addressed in the Government’s water and waste water review, which is currently being undertaken.

Technical matters

We received a considerable number of submissions raising technical and drafting issues, and have recommended several changes accordingly.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

.

Indicates clauses divided from the bill in 1995 to form the Chatham Islands Council Bill, the Dog Control Bill, the Local Government Amendment Bill (No. 4), and the Local Government Amendment Bill (No. 5), and in 1996 to form the Local Government Amendment Bill (No. 7) and the Rating Powers Amendment Bill.

(Local Government Law Reform)
Local Government Amendment (No. 7)

<p>517ZE. Transfer of existing easements, etc</p> <p>517ZF. Transfer of water permits</p> <p>517ZG. Transfer of land</p> <p>517ZH. Section 11 and Part X of Resource Management Act 1991 and Part XXI of this Act not to apply</p> <p>517ZI. Activity permitted as of right</p> <p>517ZJ. Revocation of special orders constituting drainage areas and water-race areas</p>	<p>517ZK. Power of local authority to enter into contracts with scheme owners</p> <p>517ZL. Power to repair or maintain land drainage schemes and water races</p> <p>517ZM. Power of territorial authority to reconstitute land drainage or water-race areas</p> <p style="text-align: center;">.</p>
---	---

A BILL INTITULED

Struck Out (Unanimous)

An Act—

- (a) To reform the law relating to local government in New Zealand; and**
- (b) To make better provision for the control of dogs; and**
- (c) To amend the Conservation Act 1987, the National Parks Act 1980, the Police Act 1958, and the Rating Powers Act 1988**

5

10

New (Unanimous)

An Act to amend the Local Government Act 1974

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

Struck Out (Unanimous)

1. Short Title—This Act may be cited as the Local Government Law Reform Act **1994**.

15

New (Unanimous)

1. Short Title and commencement—(1) This Act may be cited as the Local Government Amendment Act (No. 7) **1998**,

New (Unanimous)

and is part of the Local Government Act 1974* (“the principal Act”).

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

*R.S. Vol. 25, p. 1

Amendments: 1991, Nos. 49, 58, 115; 1992, Nos. 42, 71, 74, 113, 139; 1994, No. 68; 1995, Nos. 25, 40; 1996, Nos. 12, 43, 83, 84, 96; 1997, Nos. 49, 78, 95; 1998, No. 89

Struck Out (Unanimous)

PART I

AMENDMENTS TO LOCAL GOVERNMENT ACT 1974

10 **2. This Part to be read with Local Government Act 1974**—(1) This Part of this Act, and the **First, Second, Third, Fourth, and Fifth Schedules** to this Act, shall be read together with and deemed part of the Local Government Act 1974 (in this Part of this Act referred to as the principal Act).

15 (2) Except as provided in **sections 18 (6), 19 (4), 20 (3), 21 (2), 22 (2), 23 (2), 26 (2), 27 (4), 29 (2), 30 (2), 31 (2), and 32 (3)** of this Act, this Part of this Act shall come into force on the 1st day of July 1995.

Struck Out (Unanimous)

20 **5. Application of Part XXV**—The principal Act is hereby amended by inserting in Part XXV (as enacted by section 2 of the Local Government Amendment Act 1979), before section 421 (as substituted by section 362 of the Resource Management Act 1991), the following section:

25 “420A. This Part of this Act—

“(a) Shall apply 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

(Local Government Law Reform)
Local Government Amendment (No. 7)

Struck Out (Unanimous)

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

New (Unanimous)

5. 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:

5

“420A. This Part of this Act—

“(a) Applies only to—

10

 “(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**.”

15

Struck Out (Unanimous)

6. Interpretation—(1) Section 422 of the principal Act (as enacted by section 2 of the Local Government Amendment Act 1979) is hereby amended by inserting, after subsection (2), the following subsection:

20

“(2A) Every water race vested in a council at the commencement of **Part I** of the **Local Government Law Reform Act 1994**, 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, shall be deemed to be a water race constructed by a council under this Part of this Act.”

25

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

30

“(3A) Every irrigation district constituted under Part II of the Land Drainage Act 1908 and in existence at the commencement of **Part I** of the **Local Government Law Reform Act 1994**

Struck Out (Unanimous)

shall be deemed to be a water-race area constituted under this Part of this Act.”

New (Unanimous)

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

10 “(2A) Every water race vested in a council at the commencement of **Part I** of the **Local Government Law Reform Act 1994**, 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.”

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

20 “(3A) Every irrigation district constituted under Part II of the Land Drainage Act 1908 and in existence at the commencement of **Part I** of the **Local Government Law Reform Act 1994** is deemed to be a water-race area constituted under this Part of this Act.”

Struck Out (Unanimous)

25 **7. Drawing off water from streams supplying water race**—Section 436 of the principal Act (as enacted by section 2 of the Local Government Amendment Act 1979) is hereby amended by repealing subsection (3), and substituting the following subsections:

30 “(3) If any such person as aforesaid, after having received notice from the council requiring that person to restore any such water race, refuses, neglects, or fails to comply with the notice, 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, and recover from that person the whole cost of the works.

(Local Government Law Reform)
Local Government Amendment (No. 7)

Struck Out (Unanimous)

“(4) The Council may, whether or not it executes any works under **subsection (3)** of this section, recover from any such person as aforesaid—

“(a) Any cost or expenses incurred by the council under **subsection (3)** of this section; and 5

“(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 10

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

New (Unanimous)

7. 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: 15

“(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. 20

“(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)— 25

“(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 30

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

Struck Out (Unanimous)

5 **8. Interpretation**—Section 489 (1) of the principal Act (as enacted by section 2 of the Local Government Amendment Act 1979) is hereby amended by repealing the definition of the term “waste”.

New (Unanimous)

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

Struck Out (Unanimous)

10 **9. Discharge of sewage into sewerage drain in accordance with bylaws not to constitute offence**—
Section 498 (1) of the principal Act (as enacted by section 2 of the Local Government Amendment Act 1979) is hereby
15 amended by omitting from the proviso the word “waste”, and substituting the word “contaminant”.

New (Unanimous)

20 **9. 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”.

Struck Out (Unanimous)

25 **10. Application of Part XXIX**—The principal Act is hereby amended by inserting in Part XXIX (as enacted by section 2 of the Local Government Amendment Act 1979), before section 502 (as substituted by section 362 of the Resource Management Act 1991), the following section:
“501F. This Part of this Act—

Struck Out (Unanimous)

- “(a) Shall apply only in respect of—
- “(i) Drainage channels or land drainage works owned by a council: 5
 - “(ii) Drainage channels or land drainage works under construction by a council: 5
 - “(iii) Drainage channels or land drainage works that a council has agreed to construct; and
- “(b) Shall not apply in respect of drainage channels or land drainage works transferred by a council under **Part XXIXA** of this Act.” 10

New (Unanimous)

- 10. 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: 15
- “501F. This Part of this Act—
- “(a) Applies only in respect of—
- “(i) Drainage channels or land drainage works under the control of a council: 20
 - “(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**.” 25

Struck Out (Unanimous)

- 11. Removal of obstructions from drainage channel or watercourse**—(1) Section 511 of the principal Act (as enacted by section 2 of the Local Government Amendment Act 1979) is hereby amended by inserting, after subsection (5), the following subsection: 30

Struck Out (Unanimous)

5 “(5A) Notwithstanding that no work has been carried out by the council under subsection (4) of this section, 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 hereby amended by inserting, after the words “The said cost”, the words “and expenses”.

10

New (Unanimous)

11. 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:

15 “(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.”

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

Struck Out (Unanimous)

25 **12. Order of Court on application under section 511 or section 512**—Section 513 of the principal Act (as enacted by section 2 of the Local Government Amendment Act 1979) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Direct that—

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

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

(Local Government Law Reform)
Local Government Amendment (No. 7)

Struck Out (Unanimous)

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.”

New (Unanimous)

5

12. 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—

10

“(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,—

15

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.”

Struck Out (Unanimous)

20

13. Council may make advances to owners—Section 514 of the principal Act (as enacted by section 2 of the Local Government Amendment Act 1979) is hereby amended by repealing subsection (2), and substituting the following subsection:

25

“(2) Instead of making any such advance to any owner, the council may, by agreement with the owner, itself do such things as aforesaid, 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, shall be deemed to be an advance for the purposes of this section.”

30

New (Unanimous)

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

5 “(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
10 or agents of the council, is deemed to be an advance for the purposes of this section.”

Struck Out (Unanimous)

14. New Part XXIXA inserted—The principal Act is hereby amended by inserting, after Part XXIX (as enacted by section 2 of the Local Government Amendment Act 1979), the following Part:

“PART XXIXA

“DIVESTMENT OF LAND DRAINAGE SCHEMES AND WATER-RACE SCHEMES

20 “517A. **This Part to be subject to Resource Management Act 1991 and Soil Conservation and Rivers Control Act 1941**—Nothing in this Part of this Act shall derogate from the provisions of the Resource Management Act 1991 or the Soil Conservation and Rivers Control Act 1941.

25 “517B. **Interpretation**—(1) In this Part of this Act, unless the context otherwise requires,—

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

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

35 “ ‘Land drainage scheme’ means all drainage channel 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 of this Act:

Struck Out (Unanimous)

- “ ‘Land drainage works’ has the meaning assigned to that term by section 503 of this Act:
- “ ‘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 of this Act, 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 securities within the meaning of the Securities Act 1978:
- “(d) 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:
- “(e) 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 a 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 of this Act 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:

Struck Out (Unanimous)

5 “Scheme owner’ means any person or group of persons to whom a land drainage scheme or water-race scheme is transferred under this Part of this Act; and includes any person or group of persons to whom any such scheme is subsequently sold or otherwise disposed of:

10 “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 that utilises that land drainage scheme or water-race scheme:

15 “Water race’ has the meaning given to that term by section 422 (1) of this Act:

“Water-race area’ means a water-race area constituted under Part XXV of this Act:

20 “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 of this Act:

25 **“517C. Obligation of local authority to transfer scheme—**(1) Where a transfer proposal becomes a transfer plan under **section 517P** or **section 517V** of this Act, the local authority in whom the land drainage scheme or water-race scheme is vested, shall transfer the land drainage scheme or water-race scheme to the scheme users of the land drainage scheme or water-race scheme.

30 *“Transfer Petitions and Transfer Proposals*

“517D. Initiation of transfer—(1) Subject to **section 517M** of this Act, 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 in which the scheme is vested,—

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

“(b) A transfer proposal.

Struck Out (Unanimous)

“(2) The transfer proposal shall include details of those matters specified in **section 517G** of this Act.

“517E. **Signatures to transfer petition**—(1) Subject to this section, any scheme user shall be entitled to sign the transfer petition filed under **section 517D** of this Act. 5

“(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 shall be 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 shall be counted for the purpose of assessing the number of valid signatures to the petition. 10

“(3) Every scheme user who signs a petition filed under **section 517D** of this Act shall state against their signature— 15

“(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)** of this section to sign the petition. 20

“517F. **Proposer**—Every transfer proposal filed under **section 517D** of this Act, shall 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 25

“(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.

“517G. **Contents of transfer proposal**—The transfer proposal shall— 30

“(a) Identify the land drainage scheme or water-race scheme proposed to be transferred, which identification shall be accompanied by a plan or other description sufficient to identify the land drainage scheme or water-race scheme; and 35

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

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

Struck Out (Unanimous)

- “(d) Identify such of the assets identified in **paragraph (c)** of this section as are, upon transfer of the scheme, to be purchased from the local authority; and
- 5 “(e) 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 (d)** of this section; and
- 10 “(f) 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
- 15 “(g) Identify any rights conferred by designations under operative district plans applying to any land relating to the scheme; and
- “(h) Identify any rules or proposed rules in any regional plan or proposed regional plan relating to the scheme; and
- 20 “(i) 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
- 25 “(j) Identify any leases, easements, permits, or rights of any kind in respect of any scheme assets or scheme liabilities.

“517H. **Service of transfer proposal**—The proposer of a transfer proposal filed under **section 517D** of this Act, or his or her representative, shall, as soon as practicable after filing the transfer petition and the transfer proposal under that section, serve a copy of the transfer proposal on—

- 30 “(a) Every other scheme user; and
- “(b) Every other local authority within whose district the scheme is wholly or partly situated or which is otherwise affected by the proposed transfer of the scheme.
- 35

“517I. **Duty of local authority upon receipt of transfer petition and transfer proposal**—(1) No transfer petition or transfer proposal filed under **section 517D (1)** of this Act shall be of any effect if—

(Local Government Law Reform)
Local Government Amendment (No. 7)

Struck Out (Unanimous)

“(a) The number of valid signatures to the transfer petition, is not equal to or greater than 75 percent of the number of separately rateable properties served by the land drainage scheme or water-race scheme; or 5

“(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. 10

“(2) Where any transfer petition or transfer proposal is of no effect under **subsection (1)** of this section, the local authority shall notify the proposer or his or her representative accordingly.

“(3) Subject to **subsection (1)** of this section, where the local authority ascertains that a transfer proposal filed under **section 517D (1)** of this Act does not adequately identify the matters set out in **section 517G** of this Act, the local authority shall return that transfer proposal to the proposer. 15

“(4) The return of the transfer proposal to the proposer under **subsection (3)** of this section— 20

“(a) Shall not in any way preclude the proposer from once again initiating a scheme transfer under **section 517D** of this Act; and

“(b) **Subsection (1) (b)** of this section shall have effect in relation to that transfer proposal as if the transfer proposal returned under **subsection (3)** of this section had never been filed. 25

“517J. **Right to object to transfer proposal**—Where a transfer proposal is filed under **section 517D** of this Act in relation to any land drainage scheme or water-race scheme,— 30

“(a) Any scheme user in relation to that scheme; and

“(b) Any local authority within whose district that scheme is wholly or partly situated or which is otherwise affected by the proposed transfer of that scheme,— may, in accordance with this Part of this Act, object to the transfer proposal. 35

“517K. **Notice of right to object**—Subject to **section 517I (3)** of this Act, every local authority that receives a transfer petition and transfer proposal under **section 517I** of this Act shall, as soon as practicable after such receipt, forward— 40

Struck Out (Unanimous)

- 5 “(a) To every scheme user; and
“(b) To every local authority within whose district the
scheme is wholly or partly situated or which is
otherwise affected by the proposed transfer of the
scheme,—
a notice complying with **section 517L** of this Act.
- 10 “517L. **Contents of notice of right to object**—Every
notice given under **section 517K** of this Act shall—
“**(a)** Give notice of the local authority’s receipt of the transfer
petition and transfer proposal under **section 517I** of this
Act; and
“**(b)** Give notice of the place or places where the transfer
proposal may be inspected; and
15 “**(c)** Invite any person (being a scheme user or a local
authority affected by the proposed transfer) 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
20 identified in the notice or the transfer proposal
prepared in respect of any such scheme, at the
principal office of the local authority in which that
land drainage scheme or water-race scheme is
vested, on or before a date specified in the notice,
25 which date shall be at least 6 weeks after the date of
that notice:
“**(d)** Advise that, where objections are received from either—
“**(i)** A local authority affected by the proposed
transfer of the scheme, including the local authority
30 in whom the scheme is vested; or
“**(ii)** Not less than 5 percent of the number of
scheme users,—
all the objections received by the local authority will
be forwarded to the Commission for determination
35 in accordance with **section 517R** of this Act:
“**(e)** Advise that, where a local authority receives an objection
under **paragraph (d) (i)** of this subsection, any objections
received by the local authority under **paragraph (d) (ii)** of
40 this subsection will also be forwarded to the
Commission, notwithstanding that those objections

Struck Out (Unanimous)

are from less than 5 percent of the number of
scheme users.

“517M. **Lodging of objections**—Every objection under
section 517J of this Act— 5

“(a) Shall be made in writing; and

“(b) Shall, within the time stipulated in the notice issued
under section 517L of this Act, be lodged with the
principal administrative officer of the local
authority. 10

“517N. **Service of copies of objections**—Every person
who lodges, and every group of persons which lodges, an
objection under section 517J of this Act shall, 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 15
the transfer or his or her representative.

“517O. **Notification by local authority of receipt of
objections**—Within 7 days after the closing date for the
lodging of written objections under section 517J of this Act, the
local authority— 20

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

“(i) From any local authority affected by the
proposed transfer; or

“(ii) From not less than 5 percent of scheme users; 25
and

“(b) Shall advise all scheme users and every local authority
within whose district the scheme is wholly or partly
situated or which is otherwise affected by the
proposed transfer, of its finding under paragraph (a) of 30
this section.

“517P. **Procedure where insufficient or no objections
received**—Where any transfer proposal has been notified
under section 517K of this Act and insufficient or no objections
have been received within the period allowed for objections, 35
the transfer proposal shall, as from the expiration of that
period, become a transfer plan and the local authority shall, as
soon as practicable, give effect to that transfer plan.

Struck Out (Unanimous)

5 “517Q. **Procedure on receipt of objections**—The local authority shall as soon as is practicable upon receipt by it of objections from either a local authority affected by the proposed transfer or from 5 percent or more of scheme users forward to the Commission a copy of—

“(a) The transfer proposal; and

“(b) Every objection received by the local authority under **section 517J** of this Act; and

10 “(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 517R** of this Act.

“517R. **Duty of Commission to consider objections**—

15 (1) The Commission—

“(a) Shall give consideration to the transfer proposal and to each objection received; and

20 “(b) Shall ensure that the proposer or a representative of the proposer and any person who, or any group of persons which, has lodged a written objection under **section 517J** of this Act, and any other person or group of persons the Commission thinks fit, is given a reasonable opportunity to be heard by the Commission.

25 “(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 shall determine whether the transfer of the scheme shall proceed or
30 not.

35 “(3) Where the Commission determines under **subsection (2)** of this section that the proposed transfer shall 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.

40 “(4) The determination of the Commission under **subsections (2)** and **(3)** of this section shall be final.

Struck Out (Unanimous)

“517s. **Relevant criteria**—Where the Commission considers any transfer proposal under **section 517R** of this Act, the relevant criteria, in relation to any such consideration, shall be—

5

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

“(b) The likely effects on any local authority of the transfer of the scheme; and

“(c) 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

10

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

15

“517t. **Limitation on further transfer proposals where transfer proposal declined**—Where the Commission determines under **section 517R (2)** of this Act that a scheme shall not be transferred, any transfer proposal that is the same or substantially similar to the transfer proposal that has been declined may not be initiated under **section 517D** of this Act in respect of that scheme at any time in the period of 36 months beginning with the date of the Commission’s determination under **section 517R** of this Act.

20

25

“517u. **Notice of Commission’s determination**—Where the Commission makes a determination under **section 517R** of this Act, the Commission shall as soon as practicable after making that determination,—

30

“(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 his or her representative; and

35

“(b) Give notice of the determination and explanatory statement and of the place or places at which it may be inspected, to all scheme users and local authorities affected by the proposed transfer.

Struck Out (Unanimous)

“Transfer Plan

5 “517v. **Procedure after determination**—Where the Commission determines under **section 517R (2)** of this Act that the transfer of the land drainage scheme or water-race scheme shall proceed, the transfer proposal shall, as from the date of the Commission’s determination, become a transfer plan and the local authority shall, as soon as practicable, give effect to that transfer plan.

10 *“Implementation of Transfer Plan*

15 “517w. **Transfer of local authority scheme assets and scheme liabilities**—(1) Notwithstanding any Act, rule of law, or agreement, where there are insufficient or no objections to a transfer proposal notified under **section 517K** of this Act, or the Commission under **section 517R (2)** of this Act has determined that the scheme shall be transferred, the local authority shall on the transfer day—

20 “(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 of this Act; and

25 “(c) Grant to the person or group of persons to whom the scheme is transferred leases, easements, permits, 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.

30 “(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 of this Act, the local authority shall be entitled to deduct from such revenue all reasonable costs and expenses incurred in the collection of such revenue.

35 “(3) Where any designation is, under **subsection (1) (b)** of this section vested in a person or group of persons, that person or

Struck Out (Unanimous)

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 shall, until that application is disposed of or until that period of 2 years expires, whichever is the sooner, shall be deemed to be a requiring authority within the meaning of that Act. 5

“(4) Scheme assets that are fixed to, or are under or over, any land may be transferred under this Part of this Act, whether or not any interest in the land is also transferred. Where any such asset is so transferred, the asset and the land shall be regarded as separate assets each capable of separate ownership. 10

“(5) Any scheme asset or scheme liability may be transferred under this Part of this Act, whether or not any Act or agreement relating to the asset or liability permits such transfer or requires any consent to such a transfer. 15

“(6) Where a transfer takes place pursuant to this section and the transfer is registrable, the person responsible for keeping the register shall 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. 20

“517x. **Endowment land**—(1) Any land vested in the local authority in trust or as an endowment for the purpose of or in relation to any land drainage scheme or water-race scheme to be transferred under this Part of this Act shall, notwithstanding anything in the instrument creating the trust or endowment prohibiting the transfer of such land, but subject to **subsection (2)** of this section, be transferred to the scheme owners subject to any valid leases, rights, or easements subsisting over it. 25 30

“(2) Any land transferred under **subsection (1)** of this section shall be dealt with for the purposes of the instrument creating the trust or endowment and in accordance with the terms thereof. 35

“(3) Where any land transferred under **subsection (1)** of this section is at any time no longer required for use by the scheme owners, the vesting of that land shall be cancelled by the Governor-General by Order in Council and thereupon the land shall cease to be vested in the scheme owners and shall vest in 40

Struck Out (Unanimous)

the local authority free from any trusts previously affecting the land, but subject to any valid leases, rights, or easements subsisting over it.

5 “517Y. **Further provisions relating to transfer of scheme assets and scheme liabilities**—(1) Nothing in this Part of this Act—

10 “(a) Shall 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) Shall 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

15 “(c) Shall 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

20 “(d) Shall release any surety wholly or in part from all or any obligation; or

 “(e) Shall invalidate or discharge any contract or security.

25 “(2) Where a scheme asset or scheme liability is transferred to the scheme owner under **section 517W** of this Act, the local authority, shall remain liable to any third party as if the asset or liability had not been so transferred and in any such case the scheme owner shall indemnify the local authority in respect of any liability arising under this situation.

30 “(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

35 “(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 owners shall indemnify the local authority for that proportion of the liability which represents the share of the

Struck Out (Unanimous)

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 shall be deemed to be also satisfaction or performance by the local authority. 5

“(5) Any satisfaction or performance in respect of the asset or liability by any third party to the benefit of the scheme owners shall be deemed to be also to the benefit of the local authority. 10

“517z. **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 of this Act before a local authority prescribes any charge or makes any rate in respect of the scheme, any expenditure incurred by the local authority in respect of such scheme for the period beginning on the 1st day of July in any given year and ending with the transfer date of the scheme shall be recoverable by the local authority upon the transfer of the scheme, as a debt owing to the local authority by the scheme owner. 15 20

“(2) Where in any year a land drainage scheme or water-race scheme is transferred under this Part of this Act, after any charge or rate in respect of the scheme has been prescribed or made, 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, shall be refunded or rebated to the scheme owners by the local authority upon the transfer of the scheme. 25 30

“517ZA. **Rights of entry**—(1) Subject to **subsections (2) and (3)** of this section, 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 inspecting, maintaining, or repairing any such scheme. 35

“(2) Subject to **subsection (3)** of this section, the power to enter upon land given by **subsection (1)** of this section shall be subject to the following conditions: 40

Struck Out (Unanimous)

5 “(a) Entry to the land shall 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 shall be given:

“(c) Entry shall be made at reasonable times:

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

““(3) Nothing in **subsection (2)** of this section,—

15 “(a) Applies where the entry is necessary in circumstances of probable danger to life or property; or

““(b) Restricts the rights of access in order to obtain the consent to enter the land for the authorised purposes in respect of which the entry is required.

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

““(5) 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 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, or the scheme owner’s successors in title, a fair and equitable proportion of the expenses incurred by them in so doing.

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

35 “517ZB. **Registration of rights**—(1) Upon a certificate being furnished by the principal administrative officer of the local authority that the rights of entry upon land to effect necessary repairs or maintenance to a land drainage scheme or water-race scheme referred to in **section 517U (1)** of this Act apply to certain land, that certificate, together with—

40 “(a) A memorandum that there are attached to the land the rights specified in **section 517ZA (1)** of this Act; and

Struck Out (Unanimous)

- “(b) Such plans (if any) as the District Land Registrar requires,—
shall be lodged by the person in whose favour the rights exist,
in the office of the District Land Registrar. 5
- “(2) The District Land Registrar upon receipt of the certificate and memorandum referred to in **subsection (1)** of this section shall—
- “(a) If the land affected or any part of it is not subject to the Land Transfer Act 1952, cause an entry of— 10
- “(i) The memorandum; and
- “(ii) 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— 15
- “(i) The memorandum; and
- “(ii) The particulars of the certificate—
against the title to the land or part so subject.
- “(3) 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 shall lodge a true copy of the certificate and memorandum in the office of the Chief Surveyor; and the Chief Surveyor shall note the existence of the certificate and memorandum on plans and records of the land district. 20
- “(4) No action shall lie against the Crown or any other person under Part XI of the Land Transfer Act 1952 by reason of any memorandum 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. 30
- “(5) Notwithstanding any enactment or rule of law to the contrary, any memorandum registered under this section shall be 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 memorandum. 35
- 40

Struck Out (Unanimous)

5 “(6) Without limiting the provisions of this section, any right referred to in any memorandum registered by the District Land Registrar 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.

10 “(7) 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

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

20 “(8) Nothing in this section shall prejudice or affect any claim for compensation made before the commencement of this section under any of the Acts specified in **subsection (7)** of this section.

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

25 “517zc. **Transfer of existing easements, etc.**—(1) Where a land drainage scheme or water-race scheme is transferred by a local authority under this Part of this Act, 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, shall be 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.

30 “(2) In respect of any land to which **subsection (1)** of this section applies, the local authority shall, at the request to 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)** of this section.

“(3) Every such notice shall—

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

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

(Local Government Law Reform)
Local Government Amendment (No. 7)

Struck Out (Unanimous)

“(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 5

“(d) Be lodged by the local authority in the office of the District Land Registrar, who shall register the notice against the title to the land affected.

“(4) Notwithstanding anything in **subsection (3)(c)** of this section, 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 shall indicate the position or course as nearly as possible, and, until the contrary is proved, the position or course so indicated shall be deemed to be the true position or course. 10 15

“(5) Where any such notice has endorsed on it or refers to a diagram or plan to which **subsection (4)** of this section applies and it is subsequently shown by a plan deposited by the District Land Registrar 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 District Land Registrar shall endorse on the notice lodged in his or her office and on any other appropriate titles, plans, or records a reference to the deposited plan; and the notice shall thereupon be deemed to have referred to the deposited plan from the date on which it was signed. 20 25 30

“(6) No action shall lie 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 shall be 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. 35 40

Struck Out (Unanimous)

“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

“517ZD. **Transfer of water permits**—(1) Where a land drainage scheme or water-race scheme is transferred by a local authority under this Part of this Act, 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 shall be 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 shall continue 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 shall be subject to the provisions of any other enactment relating to it.

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

“517ZE. **Transfer of land**—Nothing in sections 40 to 42 of the Public Works Act 1981 shall apply to the transfer by the local authority of any land or interest in land under this part of this Act 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 shall 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 of this Act.

“(2) The District Land Registrar shall endorse on every certificate of title transferred to any person or group of persons under this Part of this Act, the effect of **subsection (1)** of this section.

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

“517ZF. **Section 11 and Part X of Resource Management Act 1991 and Part XXI of this Act not to apply**—Section 11

Struck Out (Unanimous)

and Part X of the Resource Management Act 1991 and Part XXI of this Act shall 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. 5

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

“517ZG. **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 of this Act, any use for drainage purposes or water-race purposes of the land upon which the land drainage scheme or water-race scheme is situated shall be deemed to be a permitted activity within the meaning of that Act, and section 375 of that Act shall apply accordingly. 10 15

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

“517ZH. **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 of this Act— 20

“(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 of this Act, or the corresponding provision of any former enactment relating to land drainage or water races, shall be deemed to be revoked; and 25

“(b) That part of every drainage district relating to that scheme and deemed to be a drainage area constituted under Part XXIX of this Act shall be deemed to be excluded from that drainage district and that drainage area; and 30

“(c) That part of every water-race district relating to that scheme and deemed to be a water-race area constituted under Part XXV of this Act shall be deemed to be excluded from that water-race area; and 35

“(d) That part of every irrigation district relating to that scheme and deemed to be a water-race area

Struck Out (Unanimous)

constituted under Part XXV of this Act shall be deemed to be excluded from that water-race area.

5 “(2) A local authority shall by special order alter the boundaries of any drainage area or water-race area to such extent as is necessary to reflect any revocation or exclusion effected by **subsection (1)** of this section.

10 “517ZI. **Power of local authority to enter into contracts with scheme owners**—Subject to Part XVIA of this Act, a local authority may enter into a contract with the scheme owners of any land drainage scheme or water-race scheme to undertake the planning, implementation, and maintenance of that land drainage scheme or water-race scheme.

15 “517ZJ. **Power of territorial authority to reconstitute land drainage or water-race areas**—(1) A territorial authority may, upon receipt of a petition signed by a majority of the scheme owners of a particular land drainage or water-race scheme, by special order, declare the whole or any defined part of the district in which the said land drainage scheme or

20 water-race scheme is situated to be—

“(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.

25

“(2) Part XXIX of this Act shall apply to any drainage area constituted under **subsection (1)** of this section.

“(3) Part XXV of this Act shall apply to any water-race area constituted under **subsection (1)** of this section.

30 “(4) Upon a drainage area or water-race area being constituted under **subsection (1)** of this section,—

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

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

New (Unanimous)

14. 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 5

“517A. **This Part to be 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. 10

“517B. **Interpretation**—(1) In this Part, unless the context otherwise requires,—

“‘Drainage area’ means any area constituted under Part XXIX for land drainage purposes: 15

“‘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: 20

“‘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: 30

“‘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 35

New (Unanimous)

the generality of the foregoing provisions of this definition, includes—

5 “(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:

10 “(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:

15 “(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:

20 “ ‘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—

30 “(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:

35 “ ‘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:

40 “ ‘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

New (Unanimous)

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:

5

“‘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.

10

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

15

“(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

20

“(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.

25

“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.

30

“(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.

35

New (Unanimous)

“Transfer Petitions and Transfer Proposals

5 “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

10 “(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—

15 “(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

20 “(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.

25 “(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.

30 “(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.

35 “(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 to the transfer proposal that accompanies any such transfer petition, as if the transfer proposal returned under **subsection (3)** had never been filed.

New (Unanimous)

“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. 5 10

“(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. 15

“(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— 20

“(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— 25

“(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 30

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

“517I. **Contents of transfer proposal**—The transfer proposal must— 35

“(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 40

New (Unanimous)

- 5 “(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—
- 10 “(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
- 15 “(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
- 20 “(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
- 25 “(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
- 30 “(i) Identify any rights conferred by designations under operative district plans applying to any land relating to the scheme; and
- 35 “(j) Identify any rules or proposed rules in any regional plan or proposed regional plan relating to the scheme; and
- 40 “(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

New (Unanimous)

“(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—

New (Unanimous)

- 5 “(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**.
- 10 “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
- 15 “ (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
- 20 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
- 25 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
- 30 “ (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
- 35 “ (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,—

New (Unanimous)

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. 5 10
- “517N. **Lodging of objections**—Every objection under **section 517k**—
- “(a) Must be made in writing; and 15
- “(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 20
- “(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 25
- “(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— 30
- “(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 35
- “(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

New (Unanimous)

the Local Government Commission and other parties of the issues involved.

5 “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.

10 “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—

15 “(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

20 “(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

25 “(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.

30 “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.

New (Unanimous)

- “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— 5
- “**(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,— 10
- “**(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. 15
- “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 20
- “**(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,— 25
- 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— 30
- “**(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**. 35
- “517T. **Duty of Commission to consider objections**—
- (1) Where the copy of the transfer proposal and the copies of 40

New (Unanimous)

- 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 5
- “(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. 10
- “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,— 15
- “(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 20
- “(b) Give notice of the determination and explanatory
statement to all scheme users and local authorities
affected by the proposed transfer; and 25
- “(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. 30
- “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)**. 35
- “(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 40

New (Unanimous)

- “(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
- 5 “(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
- 10 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
- 15 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
- 20 “(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
- 25 “(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
- 30 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
- 35 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.

New (Unanimous)

“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. 5 10

“(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. 15

“517Y. **Obligation of local authority to effect transfer**— 20
 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 25

“(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 30

“(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 35

“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

New (Unanimous)

effect to by the transfer of a land drainage scheme or water-race scheme, the local authority must on the transfer day—

5 “(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
10 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
15 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
20 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.

25 “(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
30 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
35 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
40 to the asset or liability permits such transfer or requires any consent to such a transfer.

New (Unanimous)

“(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. 5

“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 10

“(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 15

“(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 20

“(d) Releases any surety wholly or in part from all or any obligation; or 25

“(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. 30

“(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 35

“(b) Any scheme liabilities are incurred by a local authority for the purposes of any other land drainage scheme

New (Unanimous)

or water-race scheme vested in the local authority,—

5 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
10 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.

15 **“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
20 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.

25 “(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
30 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.

35 **“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
40 such scheme.

New (Unanimous)

“(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: 5

“(b) Reasonable notice of the intention to enter must be given: 10

“(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. 15

“(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. 20

“(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. 25

“(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)**. 30

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. 35
40

New (Unanimous)

“(2) The scheme owner must, upon receipt of that certificate, lodge it together with such plans (if any) as the District Land Registrar requires, in the office of the District Land Registrar.

5 “(3) The District Land Registrar 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 District Land Registrar 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

New (Unanimous)

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

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

5

“(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.

10

“(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)

15

“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.

20

“(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)**.

25

30

“(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

35

New (Unanimous)

“(d) Be lodged by the local authority in the office of the District Land Registrar, who must register the notice against the title to the land affected.

5 “(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
10 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
15 subsequently shown by a plan deposited by the District Land Registrar 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 District Land Registrar must endorse on
20 the notice lodged in his or her office 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
25 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
30 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.

35 “(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

New (Unanimous)

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. 5
10

“(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. 15

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

“517ZG. **Transfer of land**—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. 20
25

“(2) The District Land Registrar must endorse on every certificate of title transferred to any person or group of persons under this Part, the effect of **subsection (1)**. 30

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. 35

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

New (Unanimous)

5 “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
10 accordingly.

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

15 “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—

20 “(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

25 “(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

30 “(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

35 “(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.

40 “(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)**.

New (Unanimous)

“517ZK. Power of local authority to enter into contracts with scheme owners—Subject to Part XVIIA, 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. 5

“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. 10 15

“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— 20 25

“(a) A drainage area for the purpose of land drainage works for the drainage of land in the area; or 30

“(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)**. 35

“(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)**,—

(Local Government Law Reform)
Local Government Amendment (No. 7)

57

New (Unanimous)

- 5 “(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.”