

LOCAL GOVERNMENT AND CONVEYANCING (AMENDMENT) ACT.

Act No. 15, 1964.

**Elizabeth II,
No. 15, 1964**

An Act to make further provisions for the dedication and vesting in councils of public roads and public reserves and the vesting in councils of drainage reserves; to provide for the creation of certain easements and restrictions as to user of land by means of the registration in the office of the Registrar-General of plans of subdivision; for these and other purposes to amend the Local Government Act, 1919, the Conveyancing Act, 1919, and certain other Acts; and for purposes connected therewith. [Assented to, 20th April, 1964.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title,
citation
and com-
mencement.

1. (1) This Act may be cited as the "Local Government and Conveyancing (Amendment) Act, 1964".

(2) The Conveyancing Act, 1919, as amended by subsequent Acts and by this Act, may be cited as the Conveyancing Act, 1919–1964.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment
of Act No.
41, 1919.

2. The Local Government Act, 1919, as amended by subsequent Acts, is amended—

Sec. 4.
(Defini-
tions.)

(a) by inserting in section four in the definition of "Public reserve" after the words "public park" the words " , any land conveyed or transferred to the council pursuant to section 340A of this Act, any land

land dedicated or deemed to be dedicated as a public reserve pursuant to section 340c or 340D of this Act,";

- (b) by inserting at the end of section three hundred and twenty-three the following new subsections :—

Sec. 323.
(New roads and subdivisions.)

(2) It is hereby declared that for the purposes of this Act a reference to opening a public road includes widening a public road.

(3) Where—

- (a) any instrument registered in the office of the Registrar-General before the commencement of the Local Government and Conveyancing (Amendment) Act, 1964, purports to dedicate any land for use as a public road;
- (b) such instrument was accepted in writing by or on behalf of the council of the area in which the land was situated; and
- (c) the provisions of section three hundred and twenty-seven of this Act were not complied with in relation to the opening of such road, such dedication shall neither be, nor be deemed ever to have been, invalid by reason only of the failure to comply with the provisions of the said section three hundred and twenty-seven.
- (c) (i) by omitting from paragraph (e) of subsection one of section three hundred and twenty-seven the words "a notation of approval under the seal of the council and being accompanied by";

Sec. 327.
(Conditions to be observed before opening new roads or subdivisions.)

(ii) by omitting from paragraph (c) of subsection two of the same section the words "a notation of approval and being accompanied by";

- (d) by omitting paragraph (c) of section three hundred and thirty-two and by inserting in lieu thereof the following paragraph :—

Sec. 332.
(Subjects for consideration re new roads.)

(c) the drainage reserves or drainage easements to be provided; and;

(e)

Local Government and Conveyancing (Amendment) Act.**No. 15, 1964**

Sec. 333.
(Subjects
for con-
sideration
re sub-
divisions.)

(e) (i) by omitting paragraph (g) of subsection one of section three hundred and thirty-three and by inserting in lieu thereof the following paragraph :—

(g) the amount of land to be provided as a public reserve out of the land to be subdivided;

(ii) by omitting from paragraph (h) of the same subsection the words “and whether any land and drains are to be vested in the council” and by inserting in lieu thereof the words “and the drainage reserves and drainage easements to be provided”;

(iii) by omitting from subsection two of the same section the words “for public garden and recreation space” and by inserting in lieu thereof the words “as a public reserve”;

Subst.
sec. 336.

(f) by omitting section three hundred and thirty-six and by inserting in lieu thereof the following section :—

Registration
of plan.

336. (1) On registration in the office of the Registrar-General of a plan referred to in subsection one of section three hundred and twenty-seven of this Act, which bears a statement of intention to dedicate specified land as a public road, such land shall be deemed to be opened as a public road and thereby to be dedicated accordingly and shall without any further assurance vest in the council for an estate in fee-simple by virtue of such registration and of this Act.

(2) The provisions of section two hundred and thirty-two of this Act shall mutatis mutandis apply to any road vested in the council by this section.

(3) The provisions of this section as in force immediately before the commencement of the Local Government and Conveyancing (Amendment) Act, 1964, shall continue to apply to and in respect of the plan of any road, and the plan of any subdivision which provides for the opening of

a road, approved by the council before such commencement notwithstanding the repeal of such provisions by that Act. No. 15, 1964

- (g) by inserting at the end of section 340A the following new subsection :—

Sec. 340A.
(Public garden and recreation spaces.)

(3) This section shall not apply to a subdivision of land the plan of which was approved by the council after the commencement of the Local Government and Conveyancing (Amendment) Act, 1964.

- (h) by inserting at the end of section 340B the following new subsection :—

Sec. 340B.
(Drainage reserves.)

(3) This section shall not apply to a subdivision of land the plan of which was approved by the council after the commencement of the Local Government and Conveyancing (Amendment) Act, 1964.

- (i) by inserting next after section 340B the following new sections :—

New secs.
340C-340F.

340C. (1) Where the council is entitled under section 340A or 340B of this Act to require the conveyance or transfer to it of land in a plan of subdivision and such land was marked in such plan with the words "public garden and recreation space", or, as the case may be, the words "drainage reserve" or "reserve for drainage", the council, instead of requiring such conveyance or transfer, may by proclamation published in the Gazette notify that such land is vested in the council and thereupon such land shall without any further assurance and by virtue of such proclamation and of this Act vest in the council for an estate in fee-simple and—

Vesting of certain lands in councils by proclamation.

- (a) in the case of any such land so marked with the words "public garden and recreation space" shall be deemed to be dedicated as a public reserve; and

(b)

No. 15, 1964

- (b) in the case of any such land so marked with the words "drainage reserve" or "reserve for drainage" shall, subject to this Act, be held by the council for drainage purposes.

(2) When issuing to the council a certificate of title under the provisions of the Real Property Act, 1900, for any land so marked with the words "public garden and recreation space" and vested in the council under this section the Registrar-General shall, by a reference to this section or otherwise, indicate that such land is dedicated as a public reserve.

Public reserves.

340D. (1) On registration in the office of the Registrar-General of a plan—

- (a) referred to in section three hundred and twenty-seven of this Act;
- (b) approved by the council after the commencement of the Local Government and Conveyancing (Amendment) Act, 1964; and
- (c) on which any land is marked with the words "public reserve",

such land shall be dedicated as a public reserve and shall without any further assurance vest in the council for an estate in fee-simple by virtue of such registration and of this Act.

(2) Where the land so dedicated is under the provisions of the Real Property Act, 1900, the Registrar-General shall, on registration of such plan, issue to the council a certificate of title for the land so dedicated and shall, by a reference to this section or otherwise, indicate thereon that such land is held as a public reserve.

Drainage reserves.

340E. On registration in the office of the Registrar-General of a plan—

- (a) referred to in section three hundred and twenty-seven of this Act;
- (b)

- (b) approved by the council after the commencement of the Local Government and Conveyancing (Amendment) Act, 1964; and
- (c) on which any land is marked with the words "drainage reserve",

such land shall without any further assurance vest in the council for an estate in fee-simple by virtue of such registration and of this Act and shall, subject to this Act, be held by the council for drainage purposes.

340F. If in the opinion of the council any land vested in or acquired by it as a drainage reserve or for drainage purposes is no longer required for drainage purposes, the council may, subject to this Act, sell or lease such land subject to such restrictions or reservations as it thinks fit or may dedicate or use the land for any purpose for which the council is authorised under this Act to dedicate or use land.

The council shall not sell any land pursuant to this section except with the approval of the Governor.

- (j) by omitting section three hundred and ninety-eight; (j) Sec. 398. (Drainage reserves vested in councils.)
- (k) by omitting section 398A; (k) Sec. 398A. (Sale of drainage reserves.)
- (l) by omitting section 398B. (l) Sec. 398B. (Drainage reserves resumption.)

3. The Conveyancing Act, 1919, as amended by subsequent Acts, is amended—

- (a) by inserting at the end of paragraph (b) of subsection one of section eighty-eight the following words :—

Provided that it shall not be necessary to indicate the sites of easements intended to be created in respect of existing tunnels, pipes, conduits, wires, or other

No. 15, 1964

Sale or lease of land held for drainage purposes.

Sec. 398. (Drainage reserves vested in councils.)

Sec. 398A. (Sale of drainage reserves.)

Sec. 398B. (Drainage reserves resumption.)

Amendment of Act No. 6, 1919.

Sec. 88. (Limitation of enforceability of easements and restrictions of user of land.)

Local Government and Conveyancing (Amendment) Act.No. 15, 1964
—

other similar objects which are underground or which are within or beneath an existing building otherwise than by indicating on a plan of the land traversed by the easement the approximate position of such easement;

Sec. 88A.
(Easements
in gross and
easements
and restric-
tions appur-
tenant to
easements.)

(b) (i) by inserting next after paragraph (a) of subsection one of section 88A the following new paragraph :—

(aa) to assure to the Crown or any public or local authority constituted by Act of Parliament any easement created in pursuance of the provisions of paragraph (a) of this subsection;

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsections :—

(2) In an instrument which—

(a) takes effect after the commencement of the Local Government and Conveyancing (Amendment) Act, 1964;

(b) purports to create a right-of-way or drainage easement without a dominant tenement; and

(c) purports to create or assure such a right-of-way or drainage easement in favour of or to the Crown or any public or local authority constituted by Act of Parliament,

the expressions “right of carriage way”, “right of footway”, “easement to drain water” and “easement to drain sewage” have the same effect as if there had been inserted in lieu thereof respectively the words contained in Schedule IVA to this Act.

(3) This section applies and shall be deemed always to have applied to land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

(c)

- (c) by inserting next after section 88A the following **No. 15, 1964**
new section :—

New
sec. 88B.

88B. (1) In this section “public road”, “road” and “subdivision” have the meanings respectively ascribed to those expressions by the Local Government Act, 1919, as amended by subsequent Acts.

Creation
of easements
and restric-
tions as to
user by
plans of
subdivision.

(2) A plan referred to in section three hundred and twenty-seven of the Local Government Act, 1919, as amended by subsequent Acts, and lodged for registration in the office of the Registrar-General shall indicate in the manner prescribed by regulations made under this Act—

- (a) what easements, if any, are intended to be created as appurtenant to any existing public roads shown in the plan or roads to be vested in the council upon registration of the plan ;
- (b) what easements, if any, referred to in subsection one of section 88A of this Act, are intended to be created, and in whose favour such easements, if any, are intended to be created ;
- (c) what other easements, if any, are intended to be created ;
- (d) what restrictions as to user, if any, are intended to be created.

(3) On registration in the office of the Registrar-General of a plan of subdivision approved by the council after the commencement of the Local Government and Conveyancing (Amendment) Act, 1964, and upon which any easement or restriction is indicated in accordance with paragraph (a), (b), (c) or (d) of subsection two of this section then, subject to compliance with the provisions of this Division—

- (a) any easement so indicated as intended to be created as appurtenant to any existing public roads shown in the plan or roads to be vested in the council upon registration
of

of the plan shall be created and shall without any further assurance vest in the council by virtue of such registration and of this Act;

- (b) any easement so indicated as intended to be created pursuant to section 88A of this Act shall be created and shall without any further assurance vest in the Crown or in the public or local authority, as the case may be, by virtue of such registration and of this Act;
- (c) any other easement or restriction as to user so indicated as intended to be created shall—
 - (i) be created;
 - (ii) without any further assurance and by virtue of such registration and of this Act, vest in the owner of the land benefited by the easement or be annexed to the land benefited by the restriction, as the case may be, notwithstanding that the land benefited and the land burdened may be in the same ownership at the time when the plan is registered and notwithstanding any rule of law or equity in that behalf; and
 - (iii) not be extinguished by reason of the owner of the land benefited by such easement or restriction holding or acquiring a greater interest in the land burdened thereby.

When issuing a certificate of title under the provisions of the Real Property Act, 1900, for land benefited by any easement, or for land burdened by any easement or restriction as to user, created by this section the Registrar-General shall notify thereon such easement or restriction as to user.

(4) Any restriction as to user created by No. 15, 1964 this section shall for the purposes of this Act and the Real Property Act, 1900, have effect as if it was contained in a deed.

- (d) (i) by inserting in subsection one of section 181A after the words "contained in" the words "Part I or Part II of"; (Construction of expressions "right of carriage way" and "right of footway".)
- (ii) by inserting next after the same subsection the following new subsection :—

(1A) In an instrument purporting to create a drainage easement the expressions "easement to drain water" and "easement to drain sewage" have the same effect as if there had been inserted in lieu thereof respectively the words contained in Part III or Part IV of Schedule VIII to this Act.

- (iii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) This section applies only to—

- (a) instruments purporting to create rights-of-way and which were executed or made after the commencement of the Conveyancing (Amendment) Act, 1930; and
- (b) instruments purporting to create drainage easements and which were executed or made after the commencement of the Local Government and Conveyancing (Amendment) Act, 1964.

- (e) (i) by inserting at the end of subsection one of section one hundred and ninety-six the following new paragraph :— (Registration of plans.)

For the purposes of this section the seal of a corporation shall be deemed to be a signature.

(ii)

No. 15, 1964

(ii) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection : —

(5) (a) Every plan lodged in pursuance of this section—

(i) which bears a statement of intention to dedicate specified land as a public road, as referred to in subsection one of section three hundred and thirty-six of the Local Government Act, 1919, as amended by subsequent Acts;

(ii) on which any land is marked with the words “public reserve”, as referred to in subsection one of section 340D of the Local Government Act, 1919, as amended by subsequent Acts;

(iii) on which any land is marked with the words “drainage reserve”, as referred to in section 340E of the Local Government Act, 1919, as amended by subsequent Acts; and

(iv) on which any easement or restriction as to user is shown as being intended to be created, as referred to in subsection two of section 88B of this Act,

shall be signed by every person having sufficient estate or interest in the land to dedicate the public road or public reserve or vest the drainage reserve or create the easement or restriction as to user as aforesaid.

(b) For the purposes of paragraph (a) of this subsection every plan referred to in that paragraph shall be deemed to have

been

been sufficiently signed if it has been signed by every person whom the Registrar-General, on inspection of—

No. 15, 1964

- (i) the folium of the register-book constituted by the grant or certificate of title of the land comprised in the public road, public reserve or drainage reserve or burdened by the easement or restriction as to user, as the case may be; or
- (ii) the registered deed recited in such plan and relating to such land,

and on consideration of such further evidence as may be tendered to him, is satisfied has such sufficient estate or interest.

(c) Where the Registrar-General is so satisfied and the plan has been registered in the office of the Registrar-General, every person by whom the plan was so signed shall be deemed to have had such sufficient estate or interest.

(d) Nothing in this subsection shall affect or prejudice the enforcement by any person of any remedies which he may have by reason of the registration of any plan which does not comply with the requirements of paragraph (a) of this subsection.

(e) In any of the following cases, that is to say, where any such remedy is an action in damages and—

- (i) the person against whom the remedy may be had ceases to be liable for the payment of any such damages; or
- (ii) when the person liable for damages is dead, bankrupt, or insolvent, or cannot be found within the jurisdiction,

such

No. 15, 1964

such damages with costs of action may be recovered out of the Closer Settlement Fund or the Consolidated Revenue Fund by action against such person as the Governor may appoint as nominal defendant.

- (iii) by omitting paragraph (b) of subsection seven of the same section ;
- (iv) by omitting subsection eleven of the same section ;
- (v) by inserting at the end of the same section the following new subsection :—

(17) The provisions of this section as in force immediately before the commencement of the Local Government and Conveyancing (Amendment) Act, 1964, shall continue to apply to and in respect of any plan of subdivision approved by the council before such commencement notwithstanding the amendments to this section made by that Act.

New
Schedule
IVA.

Sec. 88A.

- (f) by inserting next after Schedule IV the following new Schedule :—

SCHEDULE IVA.*Easements in Gross.***PART I.****Right of carriage way.**

Full and free right for the body in whose favour this easement is created, and every person authorised by it, to go, pass and repass at all times and for all purposes with or without animals or vehicles or both over the land indicated herein as the servient tenement.

PART II.**Right of footway.**

Full and free right for the body in whose favour this easement is created, and every person authorised by it, to go, pass and repass on foot at all times and for all purposes without animals or vehicles over the land indicated herein as the servient tenement.

PART

PART III.**No. 15, 1964****Easement to drain water.**

Full and free right for the body in whose favour this easement is created, and every person authorised by it, from time to time and at all times to drain water (whether rain, storm, spring, soakage, or seepage water) in any quantities across and through the land herein indicated as the servient tenement, together with the right to use, for the purposes of the easement, any line of pipes already laid within the servient tenement for the purpose of draining water or any pipe or pipes in replacement or in substitution therefor and where no such line of pipes exists, to lay, place and maintain a line of pipes of sufficient internal diameter beneath or upon the surface of the servient tenement and together with the right for the body in whose favour this easement is created and every person authorised by it, with any tools, implements, or machinery, necessary for the purpose, to enter upon the servient tenement and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, or renewing such pipe line or any part thereof and for any of the aforesaid purposes to open the soil of the servient tenement to such extent as may be necessary provided that the body in whose favour this easement is created and the persons authorised by it will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and will restore that surface as nearly as practicable to its original condition.

PART IV.**Easement to drain sewage.**

Full and free right for the body in whose favour this easement is created, and every person authorised by it, from time to time and at all times by means of pipes to drain sewage and other waste material and fluid in any quantities across and through the land herein indicated as the servient tenement, together with the right to use, for the purposes of the easement, any line of pipes already laid within the servient tenement for the purpose of draining sewage or any pipe or pipes in replacement or in substitution therefor and where no such line of pipes exists, to lay, place and maintain a line of pipes of sufficient internal diameter beneath or upon the surface of the servient tenement and together with the right for the body in whose favour this easement is created and every person authorised by it, with any tools, implements, or machinery, necessary for the purpose,
to

No. 15, 1964

to enter upon the servient tenement and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, or renewing such pipe line or any part thereof and for any of the aforesaid purposes to open the soil of the servient tenement to such extent as may be necessary provided that the body in whose favour this easement is created and the persons authorised by it will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and will restore that surface as nearly as practicable to its original condition.

Schedule
VIII.

(g) by inserting at the end of Schedule VIII the following new matter :—

PART III.**Easement to drain water.**

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by him, from time to time and at all times to drain water (whether rain, storm, spring, soakage, or seepage water) in any quantities across and through the land herein indicated as the servient tenement, together with the right to use, for the purposes of the easement, any line of pipes already laid within the servient tenement for the purpose of draining water or any pipe or pipes in replacement or in substitution therefor and where no such line of pipes exists, to lay, place and maintain a line of pipes of sufficient internal diameter beneath or upon the surface of the servient tenement, and together with the right for the grantee and every person authorised by him, with any tools, implements, or machinery, necessary for the purpose, to enter upon the servient tenement and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, or renewing such pipe line or any part thereof and for any of the aforesaid purposes to open the soil of the servient tenement to such extent as may be necessary provided that the grantee and the persons authorised by him will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and will restore that surface as nearly as practicable to its original condition.

PART

PART IV.**No. 15, 1964**

Easement to drain sewage.

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by him, from time to time and at all times by means of pipes to drain sewage and other waste material and fluid in any quantities across and through the land herein indicated as the servient tenement, together with the right to use, for the purposes of the easement, any line of pipes already laid within the servient tenement for the purpose of draining sewage or any pipe or pipes in replacement or in substitution therefor and where no such line of pipes exists, to lay, place and maintain a line of pipes of sufficient internal diameter beneath or upon the surface of the servient tenement, and together with the right for the grantee and every person authorised by him, with any tools, implements, or machinery, necessary for the purpose, to enter upon the servient tenement and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, or renewing such pipe line or any part thereof and for any of the aforesaid purposes to open the soil of the servient tenement to such extent as may be necessary provided that the grantee and the persons authorised by him will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and will restore that surface as nearly as practicable to its original condition.
