

APPENDIX 48.5

New Zealand Legislation: Acts

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42 Preservation of trees and bush

- (1) The trees and bush on any historic reserve or scenic reserve or nature reserve or scientific reserve shall not be cut or destroyed, except in accordance with a permit granted under section 48A of this Act or with the express consent in writing of the Minister and subject to such terms and conditions as the Minister may determine, including (as appropriate) the method of cutting, extraction, and restoration.
- (2) The trees or bush on any recreation reserve, or Government purpose reserve, or local purpose reserve shall not be cut or destroyed, except in accordance with a permit granted under section 48A of this Act or unless the administering body of the reserve is satisfied that the cutting or destruction is necessary for the proper management or maintenance of the reserve, or for the management or preservation of other trees or bush, or in the interests of the safety of persons on or near the reserve or of the safety of property adjoining the reserve, or that the cutting is necessary to harvest trees planted for revenue producing purposes.
- (3) Where in the case of any recreation reserve or Government purpose reserve or local purpose reserve the administering body is satisfied that the cutting or destruction of trees or bush is necessary for any of the reasons mentioned in subsection (2) of this section, the administering body shall not proceed with the cutting or destruction and extraction except in a manner which will have a minimal impact on the reserve and until, as circumstances warrant, provision is made for replacement, planting, or restoration; and the administering body shall not proceed to authorise the cutting or destruction, except subject to conditions as to the method of cutting or destruction and extraction which will have minimal impact on the reserve and, as circumstances warrant, replacement, planting, or restoration; and any other conditions which the administering body considers to be appropriate in the circumstances.

Compare: 1953 No 69 ss 34, 54, 62(1), (2)

Subsection (1) was amended, as from 23 September 1981, by section 3(4) Reserves Amendment Act 1981 (1981 No 30) by inserting the words "in accordance with a permit granted under section 48A of this Act or".

Subsection (2) was amended, as from 23 September 1981, by section 3(5) Reserves Amendment Act 1981 (1981 No 30) by inserting the words "except in accordance with a permit granted under section 48A of this Act or".

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- (ii) By the Commissioner in any other case:
Provided that a licence to occupy any historic, scenic, or scientific reserve, or any part thereof, shall not be granted without the consent of the Minister.
- (2) Where, in the opinion of the Minister or, as the case may be, the administering body or the Commissioner, it is necessary or desirable for the management of the reserve for the purpose for which it is classified, licences to occupy any recreation, historic, scenic, scientific, Government purpose, or local purpose reserve, or any part of any such reserve, may be granted for the following purposes:
 - (a) Grazing, gardening, or other similar purposes:
 - (b) Cutting, felling, or removing timber or flax, or to win and remove timber or flax or to win and remove kauri gum.
- (3) Before granting any licence under . . . subsection (2) of this section, the administering body or the Minister of the Crown [(not being the Minister of Conservation)], as the case may be, shall give public notice in accordance with section 119 of this Act specifying the licence proposed to be granted, and shall give full consideration in accordance with section 120 of this Act to all objections and submissions in relation to the proposal received pursuant to the said section 120.
- [(3A) Nothing in subsection (3) of this section shall apply-
 - (a) In the case of any Government purpose reserve or local purposes reserve; or
 - (b) In the case of any recreation, historic, scenic, or scientific reserve, where public notice of the proposal has been given under any other provision of this Act or where the reserve is vested in the Crown.]
- [(3B) The Minister may, in respect of any reserve administered or controlled by him or her, grant a concession in accordance with the provisions of Part IIIB of the Conservation Act 1987 as if the reserve were a conservation area; and that Act shall apply accordingly.]
- (4) The duration of a licence under this section to occupy a reserve or any part thereof shall not exceed 5 years.

Cf. 1953, No. 69, s. 29; 1955, No. 83, s. 3; 1971, No. 25, s. 245

Amendments:

In subs. (1) the words in the first set of square brackets were substituted for the original words by s. 9 (1) of the Reserves Amendment Act 1983.

In subs. (1) (a) the words in square brackets were inserted by s. 13 (1) of the Reserves Amendment Act 1996.

In subs. (1), para. (aa) was inserted by s. 13 (2) of the Reserves Amendment Act 1996.

In subs. (3) the words "subsection (1) or" were omitted by s. 9 (2) of the Reserves Amendment Act 1983, and the words in square brackets were substituted for the former words by s. 13 (3) of the Reserves Amendment Act 1996.

Subs. (3A) was substituted for the former subs. (3A) (as inserted by s. 18 (3) of the Reserves Amendment Act 1979) by s. 13 (4) of the Reserves Amendment Act 1996.

Subs. (3B) was inserted by s. 13 (5) of the Reserves Amendment Act 1996.

Afforestation

75. Afforestation by administering body-

- (1) Where-
 - (a) Any recreation reserve or local purpose reserve, or any part thereof, is not for the time being required for the purpose for which it is classified; or
 - (b) The administering body of a recreation reserve has decided under section 53 (1) (a) (ii) of this Act that it is necessary or desirable to afforest the reserve or

any part thereof in any development, improvement, or management programme,-

the administering body may, with the prior consent of the Minister, afforest, or enter into a contract for the afforestation of, the reserve or that part thereof:

Provided that before commencing to afforest or entering into a contract for the afforestation of the reserve or any part of the reserve, the administering body shall give public notice in accordance with section 119 of this Act specifying the afforestation intended to be carried out, and shall give full consideration in accordance with section 120 of this Act to all objections against and submissions in relation to the proposed afforestation received pursuant to the said section 120.

- (2) The Minister may decline to give his consent under this section if for any reason he considers it to be in the public interest, and he shall not give his consent unless he is satisfied that the administering body or, as the case may be, the contractor has the financial resources and managerial ability to carry out the afforestation, and has provided or will provide adequate safeguards to prevent the destruction of or damage to any natural, scenic, historic, cultural, archaeological, biological, geological, or other scientific features or indigenous flora and fauna.

Protected Private Land, and Conservation Covenants

76. Declaration of protected private land-

- (1) The owner of any private land or the lessee of any Crown land may at any time apply to the Minister for his land or any part thereof to be declared to be protected private land under and subject to the terms of any agreement entered into between the owner or lessee and the Minister.
- (2) The Minister, if satisfied that the land possesses such qualities of natural, scientific, scenic, historic, cultural, archaeological, geological, or other interest that its protection is desirable in the public interest, or that rare species of indigenous flora or fauna are on the land, and the preservation of such flora and fauna is in the public interest, and that the land is sufficiently fenced or is otherwise protected from damage by stock, may, by notice in the Gazette, declare the land to be protected private land for nature, scenic, historic, or scientific purposes, having regard to the provisions of sections 18 to 21 of this Act relating to the classification of historic, scenic, nature, and scientific reserves, and may in like manner revoke any such declaration.
- (3) While that declaration remains in force, sections 93 to 105 of this Act shall, as far as they are applicable, and with the necessary modifications, apply to the protected private land in all respects as if it were a nature, scenic, historic, or scientific reserve, as the case may be, notwithstanding that the land comprised therein or, as the case may be, the interest of the lessee or licensee may be sold or otherwise disposed of: Provided that in their application to any protected private land sections 93 to 105 of this Act shall be read subject to any agreement between the owner or lessee of the land and the Minister reserving to the owner or lessee or his successors in title the right to do any act or thing forbidden by this Act.
- (4) Unless the agreement between the Minister and the owner or lessee or licensee of the land specifically provides otherwise, the agreement shall, when the notice under subsection (2) of this section has been recorded against the title, be binding on the successors in title of that owner or lessee.
- (5) Where an agreement under this section applies to land comprising part of the land in a certificate or instrument of title, the District Land Registrar may require the deposit of a plan in accordance with section 167 of the Land Transfer Act 1952.
- (6) The District Land Registrar, on the application of the Commissioner, shall enter in the appropriate folium of the register relating to the land that is declared to be protected private land a notification thereof.
- (7) The Minister may, with the consent of the owner or lessee, as the case may be, from

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77 Conservation covenants

- (1) The Minister, any local authority, or any other body approved by the Minister, if satisfied that any private land or any Crown land held under Crown lease should be managed so as to preserve the natural environment, or landscape amenity, or wildlife or freshwater-life or marine-life habitat, or historical value, and that the particular purpose or purposes can be achieved without acquiring the ownership of the land, or, as the case may be, of the lessee's interest in the land, for a reserve, may treat and agree with the owner or lessee for a covenant to provide for the management of that land in a manner that will achieve the particular purpose or purposes of conservation:
Provided that in the case of a Crown lease the consent of the Minister or the Minister of Conservation, as the case may be, shall be required, and that Minister may give consent subject to the inclusion of any condition in the covenant or conditions, and may agree to a reduction in rent if, having regard to the basis for fixing the rent, it appears fair and equitable to do so.
- (2) Any covenant under this section may be in perpetuity or for any specific term.
- (3) While any conservation covenant under this section remains in force, sections 93 to 105 of this Act, as far as they are applicable and with the necessary modifications, shall apply to the land affected thereby in all respects as if it were a reserve, notwithstanding that the land or the interest of the lessee may be sold or otherwise disposed of:
Provided that in their application to any such land or interest sections 93 to 105 of this Act shall be read subject to the terms and conditions set out in the conservation covenant.
- (4) Notwithstanding any rule of law or equity to the contrary, every conservation covenant shall run with and bind the land which is subject to the burden of the covenant, and shall be deemed an interest in the land for the purposes of the Land Transfer Act 1952. The District Land Registrar, on the application of the Commissioner in the case of an agreement to which the Minister is a party and of the local authority in the case of an agreement to which a local authority is a party, shall enter in the appropriate folium of the register relating to the land that is subject to the burden of the covenant a notification thereof.
- (5) Where the burden of a covenant under this section applies to land comprising part of the land in a certificate or instrument of title, a District Land Registrar shall not enter in any register a notification of the covenant unless—
- (a) The land to which the covenant relates is defined on an existing plan approved under the Land Transfer Act 1952 or a new plan approved under that Act; or
 - (b) The document incorporating the covenant is accompanied by a certificate given by the Surveyor-General, or the Chief Surveyor of the land district in which the land is situated, to the effect that the covenant is adequately described and properly defined—
 - (i) For the nature of the covenant; and
 - (ii) In relation to existing surveys made in accordance with regulations for the time being in force for the purpose; and
 - (iii) In accordance with standards agreed from time to time by the Director-General and either the Surveyor-General or Chief Surveyor, as the case may be.
- (6) Subject to sections 78, 82, 83, 84, 89, 90, 95, 105, and 110 of this Act, the purchase price of any conservation covenant to which the Minister is a party shall be paid out of money appropriated by Parliament.
- (7) The purchase price of any conservation covenant to which a local authority is a party may be paid by the local authority out of its general fund or account or out of a separate account kept for the purchase of land to be held as public reserves, or may be apportioned by the local authority between that fund or account and that separate account.

Subsection (1) was amended, as from 1 January 1980, by section 22 Reserves Amendment Act 1979 (1979 No 63) by inserting the words “, or historical value,”.

The proviso to subsection (1) was substituted, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65). The word “Conservation” has been substituted for the word “Lands” without specific authority.

Subsection (5) was substituted, as from 25 November 1994, by section 5 Reserves Amendment Act 1994 (1994 No 110).

APPENDIX 48.8

QEII National Trust

For open space in New Zealand

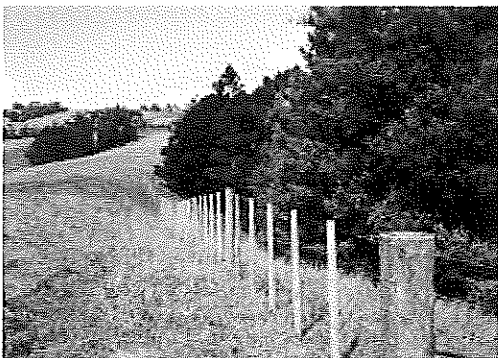
QEII helps landowners to protect significant natural and cultural features on their land through open space covenants.

- [Protecting open space](#)
- [Features protected](#)
- [What does QEII offer?](#)
- [QEII brochures](#)
- [Slideshow about QEII Trust](#)
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Protecting open space

QEII National Trust, an independent statutory organisation, was set up in 1977 to encourage and promote, for the benefit of New Zealand, the provision, protection, preservation and enhancement of open space.

The Trust's core activity is to secure long-term protection of natural and cultural features on private land, usually by the legal mechanism of an open space covenant.



Left: A semi-coastal wetland and forest covenant south of Mangawhai Village in Kaipara.

The fence protecting the covenant was funded by QEII, the landowners and the Northland Regional Council.

QEII acts as a perpetual trustee to ensure the values remain protected forever.

The QEII model of protection is proven to be a robust, simple and cost-effective resource management tool.

QEII works closely with the Department of Conservation, regional and district councils, the Historic Places Trust, Landcare Research, the New Zealand Farm Environment Award Trust and others committed to protecting and enhancing New Zealand's diverse open space.

Features protected

Features protected by QEII open space covenants include:

- | | |
|-------------------------------|------------------------------|
| • Landscapes | • Streams and water features |
| • Native forest remnants | • Arboretums |
| • High country | • Coastlines |
| • Wetlands | • Geological features |
| • Tussock grasslands | • Archaeological features |
| • Threatened species habitats | • Wildlife habitats |
| • Cultural sites | |



Left: A lowland forest and freshwater oxbow wetland covenant on

alluvial terraces of the Motu River on the East Coast.

What does QEII offer?

QEII offers:

- A relationship independent of other agencies.
- Over 30 years' experience working in partnership with private landowners throughout the country.
- Expertise in legal protection (open space covenants) and legal documentation.
- Possible funding assistance e.g. partial fencing costs.
- Survey arrangement and costs (but not in the case of subdivision).
- Lodgement of all necessary documentation with Land Information New Zealand to formally register the covenant on the property title.
- Local QEII representatives who monitor the health of covenants and provide practical management advice.
- *Open Space*TM magazine three times a year; a highly respected publication on protecting biodiversity.

Landowners throughout the country have voluntarily protected over 109,000 hectares of their land through QEII covenants.

QEII also owns 29 properties, which collectively protect 1,686 hectares of significant habitat. These have mostly been gifted to the Trust. Effective stewardship of these properties is greatly assisted by local communities and management committees.

QEII brochures

Download QEII brochures about protecting special areas with open space covenants.

[Assisting landowners to protect special features on their land](#) (PDF, 204 KB)

[Frequently asked questions about open space covenants](#) (PDF, 193KB)

Slideshow about QEII Trust

Download [Protecting our heritage - private conservation in New Zealand](#) (PPT 2.3MB), October 2008

or [PDF version - Protecting our heritage](#) (PDF 1.3MB), October 2008

QEII Trust Legislation

To aid conservation on private land, QEII was established under visionary legislation by the Queen Elizabeth the Second National Trust Act 1977 'to encourage and promote, for the benefit of New Zealand, the provision, protection, preservation and enhancement of open space.' [For more about the legislation](#)

The Trust is a statutory organisation independent from Government and managed by a Board of Directors.

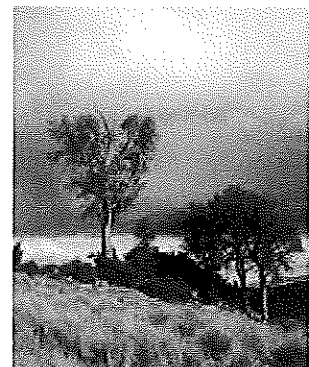
A QEII Regional Representative's View

Download a [QEII Regional Representative's View](#) of the work of QEII (PDF 253KB), by Miles Giller, QEII North Canterbury Regional Representative.

Right: Kowhai trees growing over mixed scrub and tussock grasslands, North Canterbury.

[For Board and organisational structure](#) ...

[Find out more about open space covenants](#) ...



APPENDIX 48.9

New Zealand Legislation: Acts

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355 Council may require removal of overhanging trees, etc

- (1) The council may, by notice in writing under the hand of the Chairman or the principal administrative officer, require the owner of any land abutting upon any road within the district to do any of the following acts:
 - (a) To remove, lower, or trim to the satisfaction of the council any tree or hedge overhanging or overshadowing the road in cases where, in the opinion of the council, the removal, lowering, or trimming is necessary in order to prevent injury to the road or obstruction to the traffic thereon or to any channel, ditch, or drain appertaining thereto;
 - (b) To cut down or grub up, as the council directs, and remove all obstructions to traffic or drainage arising from the growth of plants or the spreading of roots upon or under the road up to the middle line thereof along the whole frontage of the land occupied or owned by him;
 - (c) To remove, lower, or trim to the satisfaction of the council any tree or hedge, or to lower any fence or wall, if in the opinion of the council the tree, hedge, fence, or wall is likely, by reason of its obstructing the view, to cause danger to the traffic on that or any other road.
- (2) Within 10 days after service of the notice, the owner may apply to a District Court for an order setting aside the notice.
- (3) On the hearing of the application, the Court, whose decision shall be final, shall determine whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be void.
- (4) In the case of a notice which is not set aside as aforesaid, if the owner fails to do any such act in compliance therewith within one month from the service thereof, or where application as aforesaid has been heard, then within one month after the giving of the decision of the Court, he commits an offence and is liable to a fine not exceeding \$5 for every day during which the failure has continued, and the council, by its officers or agents, may enter on the land and do that act and recover the cost from him.
- (5) The said cost shall be a charge upon the land.
- (6) In any case where the council might give any such notice as aforesaid in respect of any land, any resident of the district may, by notice in writing, request the council to do so.
- (7) If for the space of 28 days after the receipt of the last-mentioned notice the council fails to comply therewith, the resident making the request may apply to a District Court for an order requiring the council to comply with that notice.
- (8) On the hearing of the application, the Court shall determine whether and to what extent the notice shall be complied with by the council, and the decision of the Court shall be final.
- (9) The council may remove, lower, cut down, grub up, or trim, as the case may be, any fence, wall, tree, hedge, or plant to which subsection (1) of this section applies, after giving oral notice to the occupier, or, where there is no occupier, to the owner, of the land, if life, property, or any road is in imminent danger. The cost of the work shall be a charge against the land as if notice had been given under subsection (1) of this section and had not been set aside by a District Court.
- (10) For the purposes of this section the term **cut down** means cutting down and keeping cut down or removing or controlling by chemical means the stem and roots of any plants so as to prevent their throwing out any leaf, offshoot, or flower.

Part 21 (comprising sections 315 to 361) was inserted, as from 1 April 1979, by section 2 Local Government Amendment Act 1978 (1978 No 43).

The words "District Court" referred to in subsections (2), (7), and (9) were substituted, as from 1 April 1980, for the words "Magistrate's Court" pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125).

APPENDIX 48.10

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468 Tree roots obstructing public drains

- (1) The council may, by notice in writing under the hand of the Chairman or the principal administrative officer, require the occupier or, in any case where there is no occupier, the owner of any land within the district to cut down or remove any tree on that land, or any specified part of any such tree, the roots of which in the opinion of the council enter or are likely to enter any public drain.
- (2) Within 10 days after service of the notice, the occupier or owner, as the case may be, may apply to a District Court for an order setting aside the notice.
- (3) On the hearing of the application, the Court, whose decision shall be final, shall determine whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be void.
- (4) In the case of a notice which is not set aside as aforesaid, if the occupier or owner, as the case may be, fails to do any such act in compliance therewith within one month from the service thereof, or, where application as aforesaid has been heard, then within one month after the giving of the decision of the Court, he commits an offence and is liable to a fine not exceeding \$5 for every day during which the failure has continued, and the council, by its officers, or agents, may enter on the land and do that act and recover the cost from him.
- (5) The said cost shall be a charge upon the land.
- (6) The council may remove, cut down, or grub up, as the case may be, any tree to which subsection (1) of this section applies, or, as the case may be, any specified part of any such tree, after the giving of oral notice by the principal administrative officer or other authorised officer of the council to the occupier, or, where there is no occupier, to the owner, of the land, if life, property, or any road is in imminent danger. The cost of the work shall be a charge against the land as if notice had been given under subsection (1) of this section and had not been set aside by a District Court.
- (7) For the purposes of this section the term **cut down** means cutting down and keeping cut down or removing or controlling by chemical means the stem and roots of any tree so as to prevent its throwing out any leaf, offshoot, or flower.

Part 26 (comprising sections 440 to 469) was inserted, as from 12 December 1979, by section 2 Local Government Amendment Act 1979 (1979 No 59).

The words "District Court" were substituted, as from 1 April 1980, for the words "Magistrate's Court" pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125).

The words "principal administrative officer" were substituted, as from 19 January 1981, for the words "principal officer" pursuant to section 2(2) Local Government Amendment Act 1980 (1980 No 82).

APPENDIX 48.11

New Zealand Legislation: Acts

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511 Removal of obstructions from drainage channel or watercourse

- (1) Where in the opinion of the council the free flow of water in any drainage channel or in any watercourse that is not under the control of any other local authority—
 - (a) Is impeded by any obstruction, and that obstruction is likely to cause loss of life, injury, or damage to property in the district or to obstruct navigation; or
 - (b) Is likely to be impeded by any such obstruction,—the council may, by notice in writing, require the occupier or, if there is no occupier, the owner of the land on the banks of the drainage channel or watercourse within the district to remove the obstruction from the drainage channel or watercourse and from the banks of the drainage channel or watercourse to a distance not exceeding 3 metres from the nearest margin of the drainage channel or watercourse.
- (2) Within 10 days after service of the notice, the occupier or owner to whom the notice is given may apply to a District Court for an order setting aside the notice.
- (3) On the hearing of the application, the Court, whose decision shall be final, shall determine whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be void.
- (4) In the case of a notice which is not set aside as aforesaid, if the occupier or owner, as the case may be, fails to do any such act in compliance therewith within 1 month from the service thereof, or, where application as aforesaid has been heard, then within 1 month after the giving of the decision of the Court, he commits an offence, and the council, by its officers or agents, may enter on the land and do that act.
- (5) Where the council does any work under subsection (4) of this section, it may recover the cost from the occupier or owner.
- (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.
- (6) The said cost and expenses shall be a charge upon the land.
- (7) The council may dispose of anything removed under this section in such manner as it thinks fit, and the proceeds of that disposal shall form part of its general revenues.
- (8) Where a drainage channel or watercourse or the bed thereof divides 2 districts, the council on either side may exercise the powers under subsection (1) of this section in respect of that half of the river bed adjoining the bank within its district.
- (9) In this section,—
 - (a) **Obstruction** includes earth, stone, timber, driftwood, and material of all kinds, and trees, plants, weeds, and growths of all kinds;
 - (b) The occupier or owner of land adjoining a road shall be deemed to be the occupier or owner of land on the banks of any drainage channel or watercourse running upon the road where the road fronts the land of that occupier or owner, unless the channel or watercourse has been artificially constructed by the council for the purpose only of draining the surface of the road;
 - (c) **Remove**, in relation to any obstruction consisting of trees, plants, weeds, or growths, includes, if the council so specifies, burning, poisoning, cutting, or treating, whether with or without the removal of the burnt, poisoned, cut, or treated portions.
- (10) Nothing in this section shall be deemed to authorise any council to dispose of any timber floated down from any watercourse under the Timber Floating Act 1954.

Part 29 (comprising sections 502 to 517) was inserted, as from 1 April 1980, by section 2 Local Government Amendment Act 1979 (1979 No 59).

Subsection (2) was amended, as from 1 April 1980, pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125) by substituting the words "District Court" for the words "Magistrate's Court".

Subsection (5A) was inserted, as from 15 October 1999, by section 8(1) Local Government Amendment Act (No 5) 1999 (1999 No 125).

Subsection (6) was amended, as from 15 October 1999, by section 8(2) Local Government Amendment Act (No 5) 1999 (1999 No 125) by inserting the words "and expenses".