

LAND SUBDIVISION IN COUNTIES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes miscellaneous amendments to the Land Subdivision in Counties Act 1946.

Clause 2 defines the term "Town and Country Planning Appeal Board" for the purposes of the principal Act, in view of the subsequent provisions of the Bill requiring appeals to be made to that Board.

Clause 3: Section 3 (1) of the principal Act requires scheme plans to be prepared where land outside a borough or town district is subdivided. The purpose of this clause is to exclude from the provisions of the principal Act subdivisions in town districts only when the town district is an independent town district that does not form part of a county. In such a case subdivisions of land will be governed by the provisions of the Municipal Corporations Act 1933.

Clause 4: Section 3 (1) of the principal Act authorizes the Minister, with the approval of the local authority, to dispense with the preparation of scheme plans in special cases. The purpose of this clause is to dispense with the necessity of obtaining the approval of the local authority in these special cases. In practice the cases where exemptions are granted are matters of routine relating to adjustments of existing boundaries, isolated farmlets, and scattered residential sites, and the necessity of obtaining the approval of the local authority results in considerable delay. The clause requires the Minister to give to the local authority not less than fourteen days' notice of his intention to dispense with the preparation of a scheme plan, and, if within that period the local authority objects to the dispensation being granted, the Minister may not dispense with the plan.

Clause 5: Section 3 (7) of the principal Act provides that appeals against the Minister's decisions in relation to scheme plans may be made to a special Board of Appeal, and section 9 (6) provides that if any dispute arises between the subdividing owner and the local authority in relation to the local authority's requirements as to roads that dispute is to be determined by the Minister. The purpose of this clause is to require those appeals and disputes to be determined by the Town and Country Planning Appeal Board.

Clause 6: Under the principal Act no time limit is fixed within which approved scheme plans are to be acted upon. These plans are approved having regard to the circumstances existing at the time of the approval, and if the scheme is not acted upon for several years the circumstances upon which the approval was granted may have altered in the meantime. This clause requires that plans of subdivision to give effect to scheme plans shall be deposited in the Land Registry Office or in the Deeds Register Office within two years after the date of the approval of the plan, otherwise the approval will be deemed to have lapsed. In the case of any plan approved before the commencement of the Bill, the approval will lapse if the plan of subdivision is not deposited within two years after the commencement of the Bill.

Clause 7: Under the principal Act, where the owner appeals against the Minister's decision in relation to a scheme plan the local authority is not a party to the appeal and is not entitled to be heard on the appeal, and where the local authority is the appellant the owner is not a party to the appeal and is not entitled to be heard. No right to be heard is given to the Crown or to other local authorities, such as Drainage Boards, etc., affected. This clause provides that the owner, the local authority, other interested local authorities, the Minister of Lands, and the Minister of Works shall be entitled to be heard on every appeal and on every dispute referred to the Town and Country Planning Appeal Board.

Clause 8: Section four of the principal Act requires scheme plans to accord with approved town planning or extra-urban planning schemes under the Town Planning Act 1926. The purpose of this clause is to modify this provision to bring it into line with the new provisions as to town and country planning provided under the Town and Country Planning Bill, and also to clarify a doubt which has arisen as to whether the existing provision requires the scheme plan to accord with a town planning or extra-urban planning scheme which has been only provisionally approved. This clause now requires scheme plans to accord with district schemes which are operative at the time of the application for approval, and also provides that the Minister may not grant his approval to the scheme plan where the subdivision has been forbidden by the local authority under *clause 37* of the Town and Country Planning Bill as being in conflict with a district scheme which is in the course of preparation. The local authority must certify to the Minister whether or not the scheme plan is inconsistent with any such district scheme and whether or not it has forbidden the subdivision under the powers conferred by that clause.

Clause 9 amends section 9 of the principal Act, which requires a subdividing owner to form roads to the satisfaction of the authority controlling the roads and to dedicate those roads.

The new subsection (3) replaces existing provisions as to the formation of roads, and applies section 125 (5), (5A), (5B), and (5C) of the Public Works Act 1928. In place of the special provisions which have hitherto applied in the case of subdivisions under the Land Subdivision in Counties Act 1946, the general provisions of the Public Works Act 1928 as to the formation of roads to the satisfaction of the local authority will apply, subject to the modification that the local authority cannot require a subdividing owner to lay pipes for water supply or sewage unless a water supply or a sewage disposal system is available for connection thereto or is likely to be available within three years.

Section 9 (4) of the principal Act provides that the Minister may, as a condition of his approval of a scheme plan, require the subdividing owner to dedicate a strip of land for road widening. At present the controlling authority could effectively prevent an approved scheme plan from being carried into effect by refusing to accept dedication of the strip, but *subclause (2)* of this clause imposes an obligation on the local authority to accept dedication of the strip.

Clause 10 re-enacts the existing provisions of section 9 (5) of the principal Act relating to rights of way shown on scheme plans, but includes new provisions that, where the Minister approves a scheme plan conditionally on certain specified rights of way being granted or reserved, no such right of way may be surrendered without the Minister's approval, and the District Land Registrar or the Registrar of Deeds must refuse to register any transfer or conveyance unless he is satisfied that the appropriate rights of way shown on the plan have been duly granted or reserved. The plan must clearly indicate which allotment is to be subject to any such right of way and which allotment is to get the benefit of the right of way.

Clause 11: Section 10 of the principal Act provides for the creation of access ways and prescribes the conditions that apply to them. This clause re-enacts section 10 in an amended form to provide also for the creation of service lanes for the purpose of providing commercial or industrial allotments with side or rear vehicular access, and makes consequential amendments to other sections of the principal Act. The clause applies the existing provisions of Part I of the Public Works Amendment Act 1948 (which is the general provision for the creation of access ways and service lanes) with such modifications as are necessary in view of the other provisions of the Land Subdivision in Counties Act 1946.

Clause 12: Section 11 of the principal Act provides for the creation of reserves for public purposes along the seashore and the banks of lakes, rivers, etc. Subsection (3) provides that this strip is not to be regarded as part of the land the subdividing owner is required to set aside as reserve under section 12. In some cases this provision creates hardship, particularly where the land is intersected by streams or has a disproportionate length of sea or lake or river frontage. This clause gives the Minister a discretion to treat the strip of land reserved as being part of the land required to be reserved under section 12.

Clause 13: Section 12 of the principal Act requires reserves to be set aside where a subdivision is for "building purposes". Doubts have arisen as to the position where there are already buildings on the allotments, and *subclause (1)* substitutes the expression "residential or commercial or industrial purposes". This amendment will bring the wording into conformity with wording adopted in the Town and Country Planning Bill.

Section 12 of the principal Act provides that the area of land to be set aside as public reserve is to be 4 perches for each allotment on the plan available for building purposes, but in the case of business or industrial allotments of an area of more than 1 rood the area to be set aside is to be one-tenth of the area of the allotment. *Subclause (2)* limits the 4 perches provision to allotments for residential purposes, and provides that no area need be set aside as reserve in respect of any allotment of 2 acres or more that the Minister considers will not be used for commercial or industrial purposes.

In the case of commercial or industrial allotments provision is now made by *subclause (3)* for the owner's contribution to be based upon value instead of upon area, and he is to be required to pay 10 per cent of the value of all such allotments or, at his option, set aside land valued at that 10 per cent.

Clause 14 enables land set aside as Crown land to be sold on deferred payment licence. Section 12 (4) of the principal Act allows it to be sold only for cash.

Clause 15: Section 12 (4) of the principal Act authorizes the Minister to consent to the setting aside of areas as Crown land instead of as a public reserve. The amount to be so set aside is the same whether the land being subdivided has a frontage to an existing formed road or whether the subdividing owner has to bear the cost of road formation. In the latter case the Crown obtains on a sale of the allotments set aside as Crown land the benefit of the roading and other work put into the subdivision by the subdividing owner. The purpose of this clause is to make some adjustment in such a case by reducing from 4 perches to 3 perches the area to be set aside as Crown land for each residential allotment of less than 2 acres.

Clause 16: Section 12 (7) of the principal Act empowers the Minister to refuse to approve a scheme plan if he does not approve the particular land proposed to be set aside as public reserve. This clause gives him the same power where he does not approve the land proposed to be set aside as Crown land instead of as public reserve.

Clause 17: Section 14 (3) of the principal Act provides that moneys received by the Crown under section 12 or from the sale of land set aside as Crown land must be expended for the benefit of the residents of the "locality" in which the land in the scheme plan is situated. The use of the word "locality" makes uncertain the precise area intended, and this clause provides that the moneys are to be expended for the benefit of the residents in the county or counties in which the land in the scheme plan is situated.

Clause 18: Section 125 of the Public Works Act 1928 requires road or street access to be dedicated when land not having an existing road or street access is sold, and section 126 of that Act provides that section 125 is not to apply where the land sold abuts on a public navigable river or lake or on the seashore and adequate access is available by means of that river or lake or by sea. Section 125 of the Public Works Act 1928 does not apply to land in approved scheme plans under the Land Subdivision in Counties Act 1946, and provisions as to access are now imposed by the Minister of Lands under that Act and the approval of the local authority is unnecessary. The purpose of this clause is to enable the Minister of Lands to approve also access by river or lake or sea in suitable cases without the necessity of the additional approval of the local authority being obtained, the local authority's comments in that respect having already been obtained when the scheme plan was referred to it.

Hon. Mr Corbett

LAND SUBDIVISION IN COUNTIES
AMENDMENT

ANALYSIS

Title.	9. Amending provisions as to roads.
1. Short Title, and commencement.	10. Rights of way. Repeals.
2. Interpretation.	11. Access ways and service lanes.
3. Principal Act to apply to subdivisions of land in dependent town districts.	12. Amending provisions as to reserves along seashore and banks of rivers, lakes, etc.
4. Minister of Lands to have sole authority to dispense with preparation of scheme plans.	13. Amending provisions as to setting aside reserves.
5. Appeals to Town and Country Planning Appeal Board.	14. Crown land set aside may be sold on deferred payment.
6. Approval to lapse if plan of subdivision not deposited within two years.	15. Amending provisions as to area to be set aside as Crown land.
7. Persons entitled to be heard on appeals and disputes.	16. Amending provisions as to Minister's power to refuse approval of reserves to be set aside.
8. Scheme plans and conditions to accord with district schemes under <i>Town and Country Planning Act 1953</i> .	17. Proceeds of sale of land to be applied for benefit of residents in county.
	18. Section 126 of the Public Works Act 1928 excluded.

A BILL INTITULED

AN ACT to amend the Land Subdivision in Counties **Title.**
Act 1946.

BE IT ENACTED by the General Assembly of New
5 Zealand in Parliament assembled, and by the authority
of the same, as follows:

No. 70—1

Short Title, and commencement. 1946 No. 23	1. (1) This Act may be cited as the Land Subdivision in Counties Amendment Act 1953, and shall be read together with and deemed part of the Land Subdivision in Counties Act 1946 (hereinafter referred to as the principal Act).	5
Interpretation.	(2) This Act shall come into force on the <i>first</i> day of <i>November</i> , nineteen hundred and fifty- <i>three</i> .	
	2. Section two of the principal Act is hereby amended by adding to subsection one the following definition:	
	“ ‘Town and Country Planning Appeal Board’ means the Town and Country Planning Appeal Board constituted under the <i>Town and Country Planning Act 1953</i> . ”	10
Principal Act to apply to subdivisions of land in dependent town districts.	3. (1) Section three of the principal Act is hereby amended by inserting in subsection one, after the words “town district”, the words “not forming part of a county”.	15
	(2) Section three of the principal Act is hereby further amended by inserting, after subsection one, the following new subsection:	20
1933, No. 30	“(1A) Nothing in Part XXVIII of the Municipal Corporations Act 1933 shall apply with respect to any subdivision of land in a town district that forms part of a county.”	
Minister of Lands to have sole authority to dispense with preparation of scheme plans.	4. (1) Section three of the principal Act is hereby further amended as follows:	25
	(a) By omitting from subsection one the words “with the approval of the local authority”:	
	(b) By repealing paragraph (b) of subsection eight.	
	(2) Section three of the principal Act is hereby further amended by adding to subsection one the following additional proviso:	30
	“ Provided also that before dispensing with the preparation of a scheme plan the Minister shall give to the local authority not less than fourteen days’ notice of his intention to do so, and he shall not dispense with the preparation of the plan if within that period he receives notice from the local authority that it objects to the dispensation being granted.”	35
Appeals to Town and Country Planning Appeal Board.	5. (1) Section three of the principal Act is hereby further amended by omitting from subsection seven all words after the words “in the prescribed manner”, and substituting the words “to the Town and Country Planning Appeal Board, whose decision shall be final”.	40

(2) Section nine of the principal Act is hereby amended by omitting from subsection six the words " the Minister ", and substituting the words " the Town and Country Planning Appeal Board ".

5 6. Section three of the principal Act is hereby further amended by inserting, after subsection seven, the following new subsection:

10 " (7A) Where a scheme plan has been approved for the purposes of this Act but no plan of subdivision in respect of the land affected by the scheme plan is deposited under the Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may require, within a period of two years after the date of that approval or, in the case of a scheme plan approved before
15 the commencement of this subsection, within a period of two years after the commencement of this subsection, the approval shall be deemed to have lapsed at the expiration of that period, and thereupon the scheme plan shall cease to have any effect."

20 7. The principal Act is hereby amended by inserting, after section three, the following new section:

25 " 3A. Where an appeal or dispute under this Act is made or referred to the Town and Country Planning Appeal Board, the following persons shall be entitled to be heard and to produce evidence and cross-examine witnesses, namely:

" (a) The owner of the land to which the appeal or dispute relates:

30 " (b) The local authority within whose jurisdiction the land is situated:

35 " (c) Any Board, Commissioners, trustees, or other person or body however designated, having authority under any enactment to undertake in the locality in which the land is situated the construction or management of any public work:

" (d) The controlling authority, where the appeal or dispute relates to any question arising under section nine of this Act:

40 " (e) The Minister of Lands:

" (f) The Minister of Works."

Approval to lapse if plan of subdivision not deposited within two years.

1952, No. 52

See Reprint of Statutes, Vol. VII, p. 1143

Persons entitled to be heard on appeals and disputes.

Scheme plans
and conditions
to accord
with district
schemes under
*Town and
Country
Planning Act
1953.*

8. (1) The principal Act is hereby amended by repealing section four, and substituting the following section:

“ 4. Notwithstanding anything in this Act or in any regulations made under this Act, where— 5

“(a) A district scheme under the *Town and Country Planning Act 1953* affecting any locality is for the time being operative; or

“(b) The local authority has prohibited the subdivision under section *thirty-seven* of that Act and that prohibition is for the time being effective under the provisions of that section,— 10

no scheme plan of land in that locality or to give effect to the subdivision shall be approved or varied under this Act, nor shall any conditions be imposed or varied, if the scheme plan or the conditions, or the variation thereof, are inconsistent with the district scheme or, as the case may be, have been prohibited by the local authority.” 15 20

(2) Section three of the principal Act is hereby amended by repealing the proviso to subsection four, and substituting the following proviso:

“ Provided that before approving any scheme plan the Minister shall submit a copy thereof to the local authority for the comments of the local authority thereon, and the local authority shall certify to the Minister whether or not— 25

“(a) The scheme plan is inconsistent with a district scheme under the *Town and Country Planning Act 1953* which affects the locality where the land in the scheme plan is situated and which is for the time being operative; and 30

“(b) The local authority has under section *thirty-seven* of that Act prohibited the subdivision and whether or not that prohibition is for the time being effective under the provisions of that section.” 35

9. (1) Section nine of the principal Act is hereby amended by repealing subsection three, and substituting the following subsection: 40

Amending
provisions as
to roads.

“ (3) Notwithstanding anything in section seven-
teen of this Act, the provisions of subsections five, *five A*,
five B, and *five C* of section one hundred and twenty-five
of the Public Works Act 1928 (as enacted by section
5 twenty-four of the Public Works Amendment Act 1948 1948, No. 39
and section *two* of the *Public Works Amendment Act*
1953) shall, as far as they are applicable and with the
necessary modifications, apply with respect to the
proposed roads shown on a scheme plan as if references
10 in those subsections to the local authority were references
to the controlling authority:

“ Provided that a controlling authority shall not
require an owner to supply and lay pipes for water
supply or sewage unless a water supply or, as the case
15 may be, a sewage disposal system is available for
connection thereto or is likely to be available within a
period of three years.”

(2) Section nine of the principal Act is hereby
further amended by adding to paragraph (*b*) of sub-
20 section four the words “ The controlling authority shall
accept dedication of every such strip of land.”

10. (1) The principal Act is hereby amended by Rights of way.
inserting, after section nine, the following new section:

“ 9A. (1) Land shown on any scheme plan as being
25 land over which it is proposed to grant or reserve a
right of way shall be of such width and length as may
be approved by the Minister.

“ (2) No land which is the subject of a scheme plan
shall become subject to a right of way, except with the
30 approval of the Minister.

“ (3) Where the Minister approves a scheme plan
conditionally on any specified rights of way shown on
the plan being duly granted or reserved, the following
provisions shall apply:

35 “ (*a*) No such right of way may be surrendered by
the owner of the dominant tenement or be
merged by transfer to the owner of the
servient tenement, except with the approval
of the Minister. The District Land Registrar
40 shall endorse on the instrument by which
the right of way is granted or reserved a
memorial that the right of way is subject to
the provisions of this paragraph:

1952, No. 52
See Reprint
of Statutes,
Vol. VII,
p. 1143

“(b) There shall be endorsed on the scheme plan and on every plan of subdivision of the land deposited under the Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may be, a memorandum showing with respect to each such right of way which is the dominant tenement and which is the servient tenement: 5

“(c) The District Land Registrar or, as the case may require, the Registrar of Deeds shall refuse to register any instrument of transfer or conveyance of any allotment shown on the plan, unless he is satisfied that all rights of way so specified which are appurtenant to that allotment or to which that allotment is subject have been duly granted or reserved. 10 15

“(4) Subsection three of this section shall not apply with respect to any scheme plan that was approved before the commencement of this section.” 20

Repeals.

(2) The following enactments are hereby repealed, namely:

(a) Subsection five of section nine of the principal Act:

1947, No. 64

(b) Section sixteen of the Land Laws Amendment Act 1947. 25

Access ways
and service
lanes.

11. (1) The principal Act is hereby amended by repealing section ten, and substituting the following section:

1948, No. 39

“10. (1) Subject to the approval of the Minister, any scheme plan may provide for the laying out of access ways and service lanes complying with the provisions of this section and of Part I of the Public Works Amendment Act 1948. In their application to access ways and service lanes created under this section, the provisions of that Part shall be read subject to the provisions of this section. 30 35

“(2) Notwithstanding anything in section three of the Public Works Amendment Act 1948, an Order in Council shall not be necessary for the constitution of an access way or service lane under the provisions of this section. 40

“(3) Every access way shall be of a width approved by the Minister and every service lane shall be of a width and grade approved by the Minister:

5 “Provided that, notwithstanding anything in sub- 1948, No. 39
section two of section eight of the Public Works
Amendment Act 1948, the Minister may approve an
access way having a width of more than twelve feet
measured at right angles to its course.

10 “(4) If any dispute arises as to the requirements
of the local authority or the Minister under this section,
the matter shall be referred to the Town and Country
Planning Appeal Board, whose decision shall be final.

15 “(5) Every proposed access way or service lane
and every piece of land shown on the scheme plan as
access way or service lane which is not vested in the
Crown as access way or service lane shall be trans-
ferred to the Crown by instrument in writing which
shall be registered by the owner in the office of the
20 District Land Registrar or, as the case may require,
of the Registrar of Deeds, and the Registrar shall
refuse to register any such instrument as aforesaid
unless he is satisfied that the requirements of this
section have been complied with.

25 “(6) The control and management of access ways
and service lanes created under this section shall vest
in the local authority, which shall have power to main-
tain and repair any access way or service lane.

(2) Section three of the principal Act is hereby
further amended by omitting from subsection three the
30 words “and access ways” wherever they appear, and
substituting in each case the words “access ways, and
service lanes”.

(3) Section five of the principal Act is hereby
amended as follows:

35 (a) By inserting in paragraph (c) of subsection one,
after the words “access way” wherever they
appear, the words “or service lane”:

40 (b) By omitting from subsection three the words
“and ‘access way’ includes a proposed access
way”, and substituting the words “and
‘access way’ and ‘service lane’ include a
proposed access way and proposed service
lane, respectively”.

- (4) Section fifteen of the principal Act is hereby amended by inserting, after the words "access ways" wherever they appear, the words "service lanes".
- 1948, No. 39 (5) The Public Works Amendment Act 1948 is hereby amended as follows: 5
- 1946, No. 23 (a) By omitting from the definition of the term "access way" in subsection one of section two the words "and the Land Subdivision in Counties Act 1946":
- (b) By omitting from subsection three of section two the words "or the Land Subdivision in Counties Act 1946": 10
- (c) By inserting in subsection one of section four, after the words "the Crown, and", the words "except in the case of an access way or service lane created under the Land Subdivision in Counties Act 1946". 15
- Amending provisions as to reserves along seashore and banks of rivers, lakes, etc.
- Amending provisions as to setting aside reserves.
- 1951, No. 81 12. Section eleven of the principal Act is hereby amended by adding to subsection three the words "except to such extent (if any) as the Minister in his discretion allows. The Minister's decision under this subsection shall be final." 20
13. (1) Section twelve of the principal Act is hereby amended as follows:
- (a) By omitting from subsection one the words "building purposes", and substituting the words "residential or commercial or industrial purposes": 25
- (b) By omitting from subsection two the words "for building purposes", and substituting the words "in the opinion of the Minister for residential purposes": 30
- (c) By omitting from subsection six (as amended by section seventeen of the Statutes Amendment Act 1951) the words "building allotments" wherever they occur, and substituting in each case the words "allotments for residential purposes". 35
- (2) Section twelve of the principal Act is hereby further amended by repealing the first proviso to subsection two, and substituting the following proviso: 40

“ Provided that no area shall be required to be set aside as aforesaid in respect of any allotment of an area of two acres or more which in the opinion of the Minister will not be used for commercial or industrial purposes.”

(3) Section twelve of the principal Act is hereby further amended by inserting, after subsection three, the following new subsection:

“(3A) Where the Minister is of the opinion that any allotment will be used for commercial or industrial purposes, he shall make it a condition of his approval that an amount equal to ten per cent of the value as determined by him of each such allotment shown on the scheme plan shall be paid to the Receiver of Land Revenue for the land district in which the land is situated within such time as the Minister may specify, or that, at the option of the owner, there shall be set aside as reserved for public purposes or, at the discretion of the Minister, as Crown land available for disposal by way of sale for cash or on deferred payment licence under the Land Act 1948, an area of land of a value equal to the abovementioned ten per cent.”

1948, No. 64

14. (1) Section twelve of the principal Act is hereby further amended by adding to subsection four (as amended by subsection four of section seventy-nine of the Land Act 1948) the words “ or on deferred payment licence under the Land Act 1948 ”.

Crown land set aside may be sold on deferred payment.

(2) Section thirteen of the principal Act is hereby amended by adding to subsection two the words “ or on deferred payment licence under the Land Act 1948 ”.

15. Section twelve of the principal Act is hereby further amended by adding to subsection four (as amended by section *fourteen* of this Act) the following proviso:

Amending provisions as to area to be set aside as Crown land.

“ Provided that, where land to be set aside under this subsection as Crown land has a frontage to any new road being constructed by the owner, the area to be so set aside shall amount to not less than three perches for each allotment of an area of less than two acres which in the opinion of the Minister will be used for residential purposes.”

Amending provisions as to Minister's power to refuse approval of reserves to be set aside.

Proceeds of sale of land to be applied for benefit of residents in county.

Section 126 of the Public Works Act 1928 excluded.

16. Section twelve of the principal Act is hereby further amended by adding to subsection seven the words " or as Crown land ".

17. Section fourteen of the principal Act is hereby amended by omitting from subsection three the word " locality "; and substituting the words " county or counties ".

18. Section seventeen of the principal Act is hereby amended by inserting, after the words " one hundred and twenty-five ", the words " one hundred and twenty-six ".