

## Local Government Act 1974

The following sections of the Local Government Act 1974 are important in relation to public access using unformed (or even formed) roads. There is no legal distinction between a formed and unformed road; what people call a “paper road” is an unformed road. However, it is important to note that there is a distinction between urban and rural roads - rural unformed roads cannot be stopped without the permission of the Minister of Lands.

I have highlighted a couple of bits that are of particular interest to those who are trying to access a paper road.

### [Part 21 Roads \(other than regional roads\), service lanes, and access ways](#)

#### **319 General powers of councils in respect of roads**

The council shall have power in respect of roads to do the following things:

- (a) To construct, upgrade, and repair all roads with such materials and in such manner as the council thinks fit:
- (b) [Repealed]
- (c) To lay out new roads:
- (d) To divert or alter the course of any road:
- (e) To increase or diminish the width of any road subject to and in accordance with the provisions of the district plan, if any, and to this Act and any other Act:
- (f) To determine what part of a road shall be a carriageway, and what part a footpath or cycle track only:
- (g) To alter the level of any road or any part of any road:
- (h) To stop or close any road or part thereof in the manner and upon the conditions set out in [section 342](#) and [Schedule 10](#) to this Act:
- (i) To make and use a temporary road upon any unoccupied land while any road adjacent thereto is being constructed or repaired:
- (j) To name and to alter the name of any road and to place on any building or erection on or abutting on any road a plate bearing the name of the road:
- (k) To sell the surplus spoil of roads:
- (l) For the purpose of providing access from one road to another, or from one part of a road to another part of the same road, to construct on any road, or on land adjacent to any road, elevators, moving platforms, machinery, and overhead bridges for passengers or other traffic, and such subways, tunnels, shafts, and approaches as are required in connection therewith.

Compare: 1954 No 76 s 170(4)(a)-(h), (j), (l)-(o); 1956 No 64 s 191A(5)(a)-(h), (j), (l)-(o); 1972 No 132 s 2

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).

Paragraph (a) was amended, as from 30 March 1985, by section [39\(1\)](#) Local Government Amendment Act 1985 (1985 No 60) by inserting the word “upgrade”.

Paragraph (b) was repealed, as from 29 April 1985, by section [39\(1\)](#) Local Government Amendment Act 1985 (1985 No 60).

### 323 Unformed roads in the district

- (1) Where the land comprising any unformed road existing at the commencement of this Part of this Act was immediately before the commencement of this Part of this Act vested in the Corporation of the district by section 191A(1) of the Counties Act 1956, the Minister of Lands may, by notice in writing to the council given at any time while the land, or, as the case may be, the part thereof specified in the notice, continues to be an unformed road, require the council to transfer that land or that specified part thereof to the Crown without consideration, and the council shall transfer it to the Crown accordingly.
- (2) On the publication in the *Gazette* of a notice by the Minister of Lands declaring that any land or part thereof referred to in subsection [\(1\)](#) of this section has been transferred to the Crown pursuant to this section, the land transferred shall cease to be a road and shall be deemed to be Crown land subject to the [Land Act 1948](#).
- Compare: 1956 No 64 s 191B: 1972 No 132 s 2
- 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).

### 342 Stopping and closing of roads

- (1) The council may, in the manner provided in [Schedule 10](#) to this Act,—
  - (a) Stop any road or part thereof in the district:
  - **Provided that the council (not being a borough council) shall not proceed to stop any road or part thereof in a rural area unless the prior consent of the Minister of Lands has been obtained;** or
  - (b) Close any road to traffic or any specified type of traffic (including pedestrian traffic) on a temporary basis in accordance with that Schedule and impose or permit the imposition of charges as provided for in that Schedule.
- (2) [Repealed]
- Compare: 1954 No 76 s 170(4)(h), (i); 1956 No 64 s 191A(5)(h), (i); 1972 No 132 s 2
- 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).
- Subsection (1)(b) was substituted, as from 14 August 1986, by section [9\(1\)](#) Local Government Amendment Act (No 3) 1986 (1986 No 50).
- Subsection (2) was repealed, as from 14 August 1986, by section [9\(2\)](#) Local Government Amendment Act (No 3) 1986 (1986 No 50).

### 344 Gates and cattle stops across roads

- (1) The council may, in writing, permit the erection of a swing gate or a cattle stop or both across any road, where—
  - (a) In the council's opinion it is not practicable or reasonable to fence the road; or
  - (b) By agreement the road has been taken or may be constructed through private lands and the owner or occupier requests that a gate or a cattle stop or both be erected on the outer boundary at the cost (including maintenance) of one or both parties as may be agreed.
- (2) Where a gate is erected across a road under subsection (1) of this section, a board with the words "Public Road" legibly painted thereon in letters of not less than 75 millimetres in height shall be fixed upon each side of the gate and at all times maintained thereon by the person authorised to erect the gate, or at whose cost it has been agreed that the gate shall be erected and maintained.
- (3) Where a gate or cattle stop across any road is considered redundant or an inconvenience, either by the council or by a petition supported by 20 or more residents of the district, the council may serve notice upon the person authorised to erect the gate or cattle stop of the council's intention to remove it.
- (4) Within 14 days after the service on any person of a notice pursuant to subsection (3) of this section, he may object, in writing to the council, against its intention to remove the gate or cattle stop.
- (5) Not later than 14 days after receiving any such objection, the council shall consider it, and, after hearing any submissions made by the objector or on his behalf, the council may dismiss the objection or decide not to proceed to remove the gate or cattle stop or make such modifications to its proposal as it thinks fit.
- (6) The erection across any road of any gate or cattle stop shall not be commenced unless and until plans of the gate or cattle stop have been submitted to and approved by the council. The council may make such alterations in or additions to any plans submitted to it as it thinks fit, and may require the erection of such protective or warning devices as it considers necessary; and the gate or cattle stop shall be erected in accordance with the plans and requirements and in such position as the council directs.
- (7) The Minister of Transport may from time to time, by notice in the *Gazette*, prescribe specifications for gates and cattle stops.
- (8) The person by whom any swing gate or cattle stop has been erected pursuant to a permit granted under this section, and his successors in title, shall maintain the swing gate or cattle stop to the satisfaction of the council.
- (9) Without limiting the power to make bylaws conferred on the council by [section 684](#) of this Act, the council may from time to time make bylaws regulating the use of swing gates and cattle stops erected pursuant to this section, prohibiting the causing of damage to such swing gates and cattle stops, and prohibiting the leaving open of such swing gates.
- (10) Neither the Crown nor the Minister of Transport nor the council shall be liable for damages in respect of any accident arising out of the existence of a gate or cattle stop across any road erected under a permit granted pursuant to this section.

- (11) The power conferred by this section to erect and maintain any swing gate or cattle stop on any road shall be deemed to include power to fence the road up to that gate or cattle stop and to maintain that fence, and every reference in this section to a swing gate or cattle stop shall be deemed to include a reference to such a fence.
- (12) This section shall apply with respect to every gate or cattle stop and fence lawfully erected across any road at the commencement of this Part of this Act pursuant to a permit granted under section 141 or section 142 or section 144 of the Public Works Act 1928 or section 11 of the Public Works Amendment Act 1935, as if it had been erected pursuant to a permit granted under this section.
- (13) The [Gates and Cattle Stops Order 1955](#) (SR 1955/67) shall continue in force and have effect after the commencement of this Part of this Act as if it were a notice issued under subsection [\(7\)](#) of this section.
- Compare: 1928 No 12 s 141-146; 1935 No 27 s 11; 1948 No 39 s 31(2)
- 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).
- Subsection (7) was substituted, as from 1 April 1988, by section 17(1) Local Government Amendment Act 1988 (1988 No 71).
- The reference to “s 684 of this Act” in subsection (9) was substituted, as from 1 April 1980, for the references to “section 386 of the Municipal Corporations Act 1954 or, as the case may be, section 401 of the Counties Act 1956” by [section 9](#) Local Government Amendment Act 1979 (1979 No 59).
- Subsection (10) was amended, as from 1 April 1988, by section 17(2) Local Government Amendment Act 1988 (1988 No 71) by substituting the words “Crown nor the Minister of Transport” for the words “Minister of Works and Development”.
- The Public Works Act 1928 and the Public Works Amendment Act 1935 referred to in subsection (12) were repealed by [section 248](#) Public Works Act 1981 (1981 No 35).

### **353 General safety provisions as to roads**

- The council shall take all sufficient precautions for the general safety of the public and traffic and workmen employed on or near any road and, in particular, shall—
  - (a) Take all reasonable precautions to prevent accidents during the construction or repair by the council of any road, or when any opening is made therein by the council for the repair of drains or gas pipes or for any other purpose, and require other persons doing such work to take such precautions, by erecting barriers, devices to cause traffic to slow down, or fences across any such road or around any dangerous place therein, or otherwise, and shall cause, and require other persons doing such work to cause, any such dangerous place to be sufficiently lighted by night; and any person removing any such protective work, or removing or extinguishing any such light without the authority of the council, commits an offence:
  - (b) Require the owner or occupier of any land upon which there is any hole,

well, excavation, or other place dangerous to persons passing along any road forthwith to fill in, cover, or enclose the same:

- (c) Whenever the public safety or convenience renders it expedient, require the owner or occupier of any land not separated from a road by a sufficient fence to enclose the same by a fence to the satisfaction of the council.
- 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).