CROWN LANDS ACT AMENDMENT BILL (LEASES) 1967

House of Assembly, 23 August 1967, page 1548

Second reading

**The Hon. J. D. CORCORAN (Minister of Lands)** obtained leave and introduced a Bill for an Act to amend the Crown Lands Act, 1929-1967, and for other purposes. Read a first time.

The Hon. J. D. CORCORAN: I move:

*That this Bill be now read a second time.*

As honourable members will be aware, the last large areas of undeveloped Crown lands situated in an area of assured rainfall are those in the Upper South-East area in the counties of Buckingham and Chandos and adjoining areas. Until comparatively recent years it was generally agreed that this area was not capable of safe economic development. With the advances that have taken place in development and management techniques, however, interest in these lands has increased. Following extensive investigations of the area by departmental officers, it was considered that it could be reasonable to open the area for settlement provided that adequate control could be retained both in initial development and subsequent management.

Following this investigation, the question of the development of this area was referred to the Parliamentary Committee on Land Settlement, which made its report on August 26, 1963, and recommended, inter alia, that a limited development of the area be undertaken and that this should be encouraged inwards from the fringe area. The committee also drew attention to certain other requirements and suggested that action should be taken to ensure that sufficient control could be kept over the development of lands of this type.

Since 1963 further departmental investigations, including a soil survey of the area, have been carried out, and my department has watched with interest the progress of private development in the vicinity. As a consequence, I consider that action should be taken to commence development. The scope and form of this legislation has been considered by the Land Board and by officers of the Lands Department. The primary purpose of this Bill is to provide the legislative framework to meet requirements for development and to provide the control considered desirable by the Parliamentary Committee on Land Settlement and departmental officers.

Although it was the problem of these lands that gave rise to this legislation, it is recognized that there are other lands in the State which, for not necessarily the same reasons, also require special care in their development, and accordingly this proposed Bill is designed to ensure that appropriate measures can be adopted in relation to those lands also in cases where such action is considered necessary. In the Upper South-East it is a problem of “unstable” lands, that is, lands which except under most carefully controlled conditions would tend to deteriorate and could also represent a hazard to surrounding areas. Control over their development then should pay regard to, amongst others, the following factors:

1. holdings should be sufficiently large to be economic without any need for overstocking or over-cultivation to the point of land exhaustion and, as a consequence, subdivision of holdings should not normally be permitted;
2. holdings should be by way of perpetual lease rather than as freehold to ensure that appropriate control can be exercised over development and management;
3. steps should be taken to ensure that persons granted leases have the financial and other resources necessary to enable them to successfully bear the substantial costs of development; and
4. there must be power to stop occupation and development when it is clear that continued occupation and development is causing deterioration in the land.

At the same time, opportunity has been taken to make some amendments of somewhat lesser importance to certain sections of the principal Act. These amendments provide for the simplification of administrative procedures and the correction of minor clerical errors which have been noted in the principal Act. Generally, no matters of principle are involved in these amendments. Amendments of this nature have been made to sections 14, 44, 47, 206, 225 and 232 (h) and to the Eleventh Schedule.

I come now to a consideration of the Bill in some detail. Clauses 1 and 2 are quite formal. Clauses 3 and 4 make consequential amendments to the principal Act arising from the insertion of a new Part dealing with special development lands. Clause 5 deals with the meaning of “adjacent land” and replaces a reference to this meaning which occurs at sections 66a and 66b of the principal Act and which is also used in the Part proposed to be inserted in the principal Act. Clause 6 corrects a clerical error in section 14 of the principal Act.

Clause 7 amends section 44 of the principal Act, which deals with agreements for the purchase of the freehold of Crown lands. The amendments proposed to be effected provide that in addition to the conditions, covenants and provisions set out in the Fifth Schedule to the Act the agreement may be made subject to such other conditions, covenants and provisions as the Governor thinks fit or such other provisions as the Governor thinks fit together with a right of re-entry. In the past it has been frequently necessary and desirable to impose conditions other than those contained in the Fifth Schedule in relation to agreements, and this has necessitated the drawing of a separate contract between the parties to the agreement. The effect of this amendment, therefore, will enable all the conditions of the agreement to be contained in the one document as is at present the case of perpetual leases under section 35.

Clause 8 repeals and re-enacts portion of section 47 of the principal Act which provides for minimum payments in respect to rents and periodical payments under agreements to purchase lands and is necessary for two reasons:

1. some doubt has arisen as to the general effect of an amendment to section 47 made by section 13 of the Crown Lands Act Amendment Act, 1965, which came into force on November 25, 1965; and
2. in any case it is felt that the amendment did not make it quite clear that the only rents or payments affected were those in respect of leases granted or agreements entered into after that date.

The proposed amendment is intended to clarify the situation and is accordingly expressed to have effect from the date of the commencement of the 1965 amendment. It has not been thought necessary to re-enact section 47 (2), since this section was of consequence only where the number of payments under an agreement was fixed at 60. It was there to ensure that the increase in the minimum of each payment did not result in an increase in the total amount to be paid by providing that, where this increase of the total amount would otherwise occur, the number of payments would be reduced accordingly. Since, following an amendment in 1965, the number of payments is no longer fixed, there is now no need for this provision. The provision relating to the completion of payments before the expiration of the first six years of the agreement has been omitted, since this matter is covered specifically in the form of the agreement itself.

Clauses 9 and 10 repeal provisions in sections 66a and 66b of the principal Act relating to the definition of adjacent land; this provision has now been inserted by clause 5. Clause 11 inserts a new Part, and since this represents the substance of the Bill the proposed new sections will be dealt with in order. New section 66c inserts a definition, for the purposes of the Part, of “lease”; this is merely a matter of convenience. New section 66d provides for the declaration of land as “special development lands”. New section 66e restricts the granting of special development lands to the grant on perpetual (special development) leases. New section 66f provides for the delineation of “excluded areas”, that is, those areas within special development lands which should not be used at all. The insertion of new section 66g is to ensure, so far as is practicable, that no person shall acquire a lease under this Part unless he has satisfied the board in all respects as to his capacity to develop the land. It also provides that no person shall hold more than one lease under this Part unless the dual holding is for the purpose of amalgamation of the two leases held.

New section 66h specifically excludes the operation of certain portions of the principal Act to or in relation to special development lands or leases under this Part; the excluded sections are as follows:

1. section 31, which limits the allotment to a person of lands exceeding the values set out in that section; this exclusion is necessary, as other holdings of Crown lands may represent part of the resources needed to develop leases under this Part;
2. section 35, which provides for the form and effect of “normal” perpetual leases; the form and effect of leases under this Part are provided for in new section 66e;
3. section 57, which provides for subletting for up to three years with the approval of the Minister given without reference to the Land Board; it is not proposed that leases under this Part will be sublet except with the recommendation of the Land Board made in accordance with this Part, the only exception to this rule being the case of sublease for certain easements;
4. section 61; because of the special conditions of leases under this Part it is not envisaged that they could be offered for sale in the manner set out in that section;
5. section 210, which would permit the surrender of a lease under this Part for an ordinary perpetual lease, is quite inappropriate in relation to a lease under this Part and, in fact, could defeat the object of this Bill;
6. section 212, which provides for the purchase of the fee simple; again, this provision would be inappropriate in relation to leases under this Part;
7. section 220; this section can have no application since leases under this Part cannot be surrendered for other leases or agreements;
8. subsections (2), (2a), (2aa), (3), (4) and (4a) of section 225 relate to the size of individual holdings and hence should properly not apply in relation to transfers of leases under this Part; this again relates to the need for substantial resources to develop the leases under this Part.

Clause 12 amends section 206 of the principal Act which relates to the surrender of a lease or part thereof for the grant of a new lease either to the lessee surrendering or to a nominated person. Subsection (2) of that section provides that the new lease would be on the same terms and conditions as the lease or portion of a lease surrendered. This provision is unobjectionable when the purpose of the new lease is the same as the purpose of the old lease, but where the new lease is not for the same purpose it appears reasonable that the terms and conditions of the proposed new lease should be examined in the light of the new purpose. For example, specified rent or improved conditions which would be quite appropriate to a lease for agricultural purposes would be inappropriate in the case of a lease for the erection of a dwellinghouse. In addition, the minimum rent provisions provided for in section 47 have been specifically applied to new leases under this section.

Clause 13 amends section 225 of the principal Act which, amongst other things, provides for advertisement, consideration by the board and the consent of the Minister to dealings in Crown lands. At the moment much seemingly unnecessary work and expense result from the application of this section in relation to the creation of easements in favour of the Crown and its instrumentalities, these easements being created by way of sublease. The effect of this amendment will be to obviate the need for advertisement and consideration by the Land Board with regard to subleases for the purposes of these easements. The provisions relating to the consideration of objections to the grant of the sublease are retained, as is the provision requiring the consent of the Minister.

Mr. Quirke: Does that apply only to new leases?

The Hon. J. D. CORCORAN: No, it applies generally, for example, to easements of the Electricity Trust. Clauses 14 and 15 correct clerical errors in section 232h and the Eleventh Schedule respectively. Clause 16 enacts new Twelfth and Thirteenth Schedules to the principal Act as provided for in proposed new section 66e (3). In form and substance these schedules follow the analogous provisions in the Crown Lands Act relating to ordinary perpetual leases with the following significant exceptions:

1. an additional obligation to fence any excluded area is included;
2. an additional obligation to comply with any directions of the Minister as to the number of stock which may be carried on the land;
3. an additional liability to forfeiture if—
   1. any excluded area is cultivated, etc; or
   2. the Minister is satisfied that the stability or productivity of the land is deteriorating so as to be detrimental to the land or to any adjacent land.

I assure honourable members that the Government is fully aware of the need for care in the allotment and development of this land. Appropriate action will be taken to ensure that holdings are of sufficient size for successful development. Roads will be surveyed before the land is allotted, and development will follow the routes of surveyed roads. In the initial stages, the number of blocks available for allotment will be limited, probably in the vicinity of presently established roads, and the results will be observed in order that any changes that may be found necessary may be made as allotment, which can be expected to be spread over a number of years, proceeds.

The Hon. D. N. BROOKMAN secured the adjournment of the debate.