

TOWN AND COUNTRY PLANNING AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Town and Country Planning Act 1953.

Clause 1 relates to the Short Title to the Bill.

Clause 2 rewrites the definition of the term "Board" in section 2 of the principal Act so that the term will include the Special Town and Country Planning Appeal Board which will be constituted in accordance with the new section 39A set out in *clause 10* of the Bill. *Clause 2* also amends the definition of the term "local authority" so as to make it clear that *ad hoc* authorities responsible for works are included as well as those responsible only for services.

Clause 3 amends section 10 (6) of the principal Act so as to provide that failure by an *ad hoc* authority to advise whether or not it consents to a regional planning scheme shall be deemed to be an approval. In consequence, the Regional Planning Authority will not have to appeal to the Town and Country Planning Appeal Board as at present.

Clause 4 amends section 13 of the principal Act so as to make it clear that the estimate and contributions under the section are to be on an annual basis and have to include expenditure for the administration and operation, as well as expenditure for the preparation, of the scheme.

Clause 5 amends section 14 of the principal Act so as to permit Regional Planning Authorities to incur unauthorised expenditure not exceeding £100 a year.

Clause 6 amends section 24 of the principal Act so as to make it clear that the rights of objection conferred by that section on the Minister and others extend to opposing or supporting objections and to appealing if the opposition or support is not allowed by the local authority.

Clause 7 amends subsection (3) of section 28 of the principal Act so as to require that the copies to be served under that subsection shall be certified copies.

Clause 8 amends section 35 of the principal Act, which relates to the power of the Town and Country Planning Appeal Board to authorise departures from a provision of a district scheme. It was recently held by the Supreme Court that the Appeal Board has no power to rezone land on an application for departure under the section. *Subclause (1) (a)* amends the section so as to make it apply only to particular cases. *Subclause (3)* validates zoning or rezoning carried out by the Board before 1 January 1963. *Subclause (1) (b)* amends section 35 (4) so as to make it apply to motorways. *Subclause (2)* adds a proviso to subsection (4) of section 35 so as to ensure that the position of a highway or reserve required by the Crown or a local authority may not be altered without the consent of the Minister or local authority concerned.

Clause 9: Section 38A prohibits any land use of a different character being commenced without the consent of the Council and applies the provisions of section 36 to such a breach. That section provides for a fine of £100 on summary conviction; but under the Summary Proceedings Act 1957 proceedings must be brought within six months after the subject-matter of the proceedings arises – in this case the change of use without consent. *Paragraph (a)* of the clause extends the section to cover the continuing of a changed use so as to enable a fine to be imposed even though the change of use is not discovered for more than six months. *Paragraph (b)* of the clause is consequential on the amendment in *paragraph (a)*. *Paragraph (c)* of the clause extends the right of appeal given by section 38A to the applicant and every person affected by giving the right also to the Minister, the Regional Planning Authority, and local authorities where they are affected.

Clause 10 authorises the constitution from time to time of a Special Town and Country Planning Appeal Board having a membership similar to that of the Board constituted under section 39 of the principal Act. In order to ensure that any Special Board that comes into existence shall continue only so long as there is need for it, the members of any such Board are to hold office at the pleasure of the Governor-General. The Deputy Chairman of the Town and Country Planning Appeal Board may also be appointed as Chairman of any Special Appeal Board, and any other member of either Board may sit as a member of the other Board.

Clause 11 amends clause 2 of the First Schedule to the principal Act which sets out the matters to be dealt with in regional planning schemes. The amendment substitutes the words "Land Use" for the heading of "Zoning", and deletes reference to allocation in accordance with the regulations as no provision is made for this in the regulations.

Hon. Mr Goosman

TOWN AND COUNTRY PLANNING AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Town and Country Planning Act 1953

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

1. Short Title—This Act may be cited as the Town and Country Planning Amendment Act 1963, and shall be read together with and deemed part of the Town and Country Planning Act 1953* (hereinafter referred to as the principal
10 Act).

2. Interpretation—(1) Subsection (1) of section 2 of the principal Act is hereby amended by repealing the definition of the term “Board”, and substituting the following definition:

*1957 Reprint, Vol. 15, p. 683
Amendment: 1961, No. 130

“‘Board’ means the Town and Country Planning Appeal Board constituted under section 39 of this Act; and (except in the said section 39) includes the Special Town and Country Planning Appeal Board constituted under section 39A of this Act, as inserted by section 10 of the Town and Country Planning Amendment Act 1963:”.

(2) In subsection (1) of section 2 of the principal Act, the definition of the term “local authority” (as substituted by subsection (1) of section 2 of the Town and Country Planning Amendment Act 1957) is hereby amended by inserting, after the word “hospital”, the words “works or”.

3. Approval of regional planning schemes—Subsection (6) of section 10 of the principal Act is hereby amended—

(a) By inserting, after the words “for its approval or”, the words “if any Regional Planning Authority or the Council of any county or city or borough or town district or any Road Board”:

(b) By adding the words “Where, for four months after the date on which the regional planning scheme or any section thereof was submitted for its approval, any local authority, other than the Council of a county or city or borough or town district, or a Road Board, fails to inform the Regional Planning Authority which prepared the scheme whether or not it gives or refuses its approval as aforesaid, that local authority shall be deemed to have given its approval.”

4. Regional Planning Authority to prepare estimate of cost of preparation of scheme—(1) Section 13 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) As soon as possible after its constitution and in every year thereafter every Regional Planning Authority shall prepare an estimate of the expenditure involved in the preparation, administration, and operation of a regional planning scheme; and a copy of the estimate, with the recommendations of the Authority as to the apportionment of the expenditure among the several Councils concerned, shall be submitted to each of those Councils.”

(2) Section 13 of the principal Act is hereby further amended by omitting from subsection (2) the word “administrative”, and substituting the word “aforesaid”.

5. Unauthorised expenditure of Regional Planning Authorities—Section 14 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

5 “(2A) A Regional Planning Authority may in every financial year expend for purposes not authorised by any Act or law for the time being in force a sum not exceeding one hundred pounds, and any sum expended in accordance with this subsection shall, for the purpose of subsection (2) of this section, be deemed an expense or liability incurred by the
10 Authority.”

6. Objections by Minister, local authorities, etc.—(1) Section 24 of the principal Act is hereby amended by inserting, after the word “objection”, the words “and of supporting or opposing any objection”.

15 (2) Section 24 of the principal Act is hereby further amended by adding as subsection (2) the following subsection:

20 “(2) The Minister and every such local authority, Regional Planning Authority, joint committee, and organisation or society of persons, in any case where he or it supports or opposes an objection which the Council rejects or allows, shall have a right of appeal against the rejection or allowance on grounds advanced in connection with that support or opposition.”

7. Approval of district scheme—Subsection (3) of section 25 28 of the principal Act, as substituted by section 16 of the Town and Country Planning Amendment Act 1957, is hereby amended by inserting, before the word “copies” where it first appears, the words “Certified correct”.

8. Departure from district scheme—(1) Section 35 of the 30 principal Act, as substituted by subsection (1) of section 22 of the Town and Country Planning Amendment Act 1957, is hereby amended—

(a) By omitting from subsection (1) the words “either generally or”, and also the words “or class of cases”:
35 (b) By omitting from subsection (4) the words “road or street or access way or service lane”, and substituting the word “highway”.

(2) The said section 35 of the principal Act is hereby further amended by adding to subsection (4) the following proviso:

“Provided that no such variation shall be made in respect of a proposed highway or reserve for which the Minister or a local authority will have financial responsibility, without the consent of the Minister or the local authority concerned.” 5

(3) The said section 35 of the principal Act, as amended by section 14 of the Town and Country Planning Amendment Act 1961, is hereby further amended by adding the following subsection: 10

“(9) Notwithstanding anything to the contrary in this Act, the zoning or rezoning of any land by the Board before the first day of January, nineteen hundred and sixty-three, on an application for departure under this section shall be and shall be deemed always to have been valid and effectual.” 15

9. Control of use of land for certain purposes—Section 38A of the principal Act, as inserted by section 26 of the Town and Country Planning Amendment Act 1957, is hereby amended—

- (a) By inserting in subsection (1), after the word “operative”, the words “and no such use, having been so commenced, shall be continued by any person”: 20
- (b) By omitting from subsection (2) and also from subsection (3) the word “proposed”:
- (c) By omitting from subsection (3) the words “The applicant”, and substituting the words “The Minister, the applicant, every Regional Planning Authority and local authority having jurisdiction in or adjacent to the area to which the application relates”. 25 30

10. Special Appeal Board—The principal Act is hereby amended by inserting, after section 39, the following section:

“39A. (1) In addition to the Board established by section 39 of this Act, there may from time to time be established in accordance with this section a Special Board to be called the Special Town and Country Planning Appeal Board: 35

“Provided that no such Special Board may be so established at any time while another such Special Board is in existence.

“(2) Every Special Town and Country Planning Appeal Board so established shall consist of the following persons: 40

- “(a) One person, being a barrister or solicitor of the Supreme Court of New Zealand, who shall be appointed as Chairman:

“(b) One person who shall be nominated by the executive committee of the Municipal Association of New Zealand Incorporated:

5 “(c) One person who shall be nominated by the executive committee of the New Zealand Counties Association Incorporated:

“(d) One other person.

10 “(3) Every member of any Special Town and Country Planning Appeal Board so established shall be appointed by the Governor-General on the recommendation of the Minister, and shall hold office during the pleasure of the Governor-General.

15 “(4) Any member of any Special Town and Country Planning Appeal Board so established may from time to time be reappointed, or may at any time resign his office by writing addressed to the Minister.

20 “(5) Where the Deputy Chairman of the Town and Country Planning Appeal Board is a barrister or solicitor of the Supreme Court of New Zealand, he may, without resigning or vacating that office, also be appointed from time to time under paragraph (a) of subsection (2) of this section as Chairman of any Special Town and Country Planning Appeal Board so established. Any other member of either Board may, on the written direction of the Chairman of the
25 Town and Country Planning Appeal Board, sit as a member of the other Board at any meeting without further appointment.

30 “(6) Subject to the provisions of this section, all the provisions of this Act and of any other enactment relating to the Town and Country Planning Appeal Board established under section 39 of this Act shall, as far as they are applicable and with any necessary modifications, apply with respect to the Special Town and Country Planning Appeal Board established under this section.”

35 **11. Matters to be dealt with in regional planning schemes—**
Clause 2 of the First Schedule to the principal Act is hereby amended by omitting the words “Zoning – Allocation in accordance with regulations made under this Act of areas for”, and substituting the words “Land Use – Allocation of
40 areas to be used for”.