

TOWN AND COUNTRY PLANNING AMENDMENT BILL

EXPLANATORY NOTE

Clause 1 relates to the Short Title.

Clause 2 amends section 2 of the principal Act by repealing the definition of the term "owner", and substituting a new definition.

The present definition applies only in relation to property that is the subject of an application for departure.

The new definition provides that "owner" includes any person who has agreed in writing to purchase any property, whether conditionally or unconditionally.

Clause 3 amends section 21 of the principal Act, which relates to the notification by the Minister and local authorities of requirements in respect of public works. The amendment provides for the Council administering a district scheme to be notified when any land that has been made the subject of a requirement is no longer required for the public work.

Clause 4 amends section 33A of the principal Act.

Subclause (1) is consequential on the amendment made by *clause 3* of this Bill.

Subclause (2) provides that, where a Council is notified that any land designated for a public work is no longer required, the Council shall without further formality alter the district scheme to show the removal of the designation.

Clause 5 amends section 35 of the principal Act, which relates to departures from district schemes.

The amendment provides that, after the passing of the Bill, a consent to a departure will lapse after 2 years unless the use consented to has been established or substantial progress has been made towards its establishment.

Consents granted before the passing of the Bill will so lapse on 1 December 1971.

Clause 6 amends section 36 of the principal Act, which relates to penalties for failure to comply with a district scheme. The section does not apply in respect of a use existing when the scheme became operative.

The amendment provides that, if a proposed or partly erected new building has not been used before the date on which the district scheme became

operative, any use of the building which commenced more than 2 years after the Council consented to its erection or 2 years after the passing of this Bill, whichever is the later, shall not be deemed to be an existing use unless substantial progress has been made within the 2-year period towards the erection or completion of the erection of the building.

Clause 7 amends section 38A of the principal Act, which provides for the control of the change of use of land.

The amendment provides that, in allowing or refusing an application for a change of use, the Council is to have regard to the public interest, and the likely effect of the proposed use on the existing and foreseeable future amenities of the neighbourhood, and on the health, safety, convenience, and economic and general welfare, of the inhabitants of the region.

In addition, the amendment provides that in determining any appeal against a Council's decision, the Appeal Board is to have regard to the same matters.

Clause 8 amends section 39 of the principal Act, which relates to the constitution of the Town and Country Planning Appeal Board.

The amendment rewrites the provisions relating to deputies of members to provide that the fact that any deputy acts as a member shall be conclusive evidence of his authority to do so, and that no person shall be concerned to inquire whether the occasion requiring or authorising him to do so has arisen or has ceased.

Clause 9 amends section 39A (5) of the principal Act, which provides that any member of the Number One Appeal Board, the Number Two Appeal Board, or the Special Appeal Board, may sit as a member of any of the Appeal Boards, on the written direction of the Chairman of the Number One Appeal Board.

The amendment provides that, in the absence or unavailability of the Chairman of the Number One Board, the Chairman of the Number Two Board may give such a direction.

Clause 10 amends section 40 of the principal Act, which relates to the procedure of the Appeal Board.

The amendment empowers the Chairman of the Board, sitting alone, to make certain orders.

Clause 11 amends section 42 of the principal Act, which relates to the determination of appeals.

Subclause (1) provides that, for the purpose of hearing and determining an appeal, the Appeal Board shall have all the powers, duties, functions, and discretions that the body against whose decision the appeal is brought had in respect of the same matter.

Subclause (2): Section 42 (3) of the principal Act provides that the decision of an Appeal Board shall be final and conclusive.

This provision is amended so that any decision of the Appeal Board is subject to the decision of the Supreme Court if an appeal is made to that Court under section 42A (as inserted by *clause 12* of this Bill).

Clause 12 inserts a new section 42A in the principal Act.

The new section provides that, where any party to any appeal to the Appeal Board is dissatisfied with any determination of the Board as being erroneous in point of law, he may appeal to the Administrative Division of the Supreme Court by way of case stated on a question of law only.

Clause 13 amends section 44 (6) of the principal Act, which provides for the payment of compensation in respect of the operation of any provision in a district scheme regulating the use of land or buildings, and in respect of the operation of any prohibition or refusal made under section 38 of the principal Act. Compensation is only payable to claimants who have exercised all the rights of objection and appeal under the principal Act. In addition, the claim must be made within 12 months after the provision, prohibition, or refusal became operative.

The amendment provides that the claim may be made within the above period, or within 1 month after any final determination of the Appeal Board on an appeal, whichever is the later.

The effect of this will be that, in the event of an appeal taking more than 12 months to reach finality, a claim for compensation may still be made if it is made within 1 month after the appeal has been finally determined.

Clause 14 inserts a new section 47A in the principal Act.

The new section provides that, if the owner of any land is unable to sell the land owing to it having been designated or made the subject of a requirement in respect of a public work, he may apply to the Town and Country Planning Appeal Board for an order by the Board giving the Minister or local authority the option of either removing the designation or withdrawing the requirement, or of taking the land for the public work.

Before making such an order, the Appeal Board must be satisfied that—

- (a) The land has been offered for sale on the open market for at least 6 months;
- (b) The owner has been unable to enter into an agreement for the sale of the land at a price equal to or more than the market value the land would have had if it had not been designated or made the subject of a requirement; and
- (c) The fact that the land has been designated or made the subject of a requirement is the principal reason for such an agreement for sale not having been entered into.

If any land has been designated or made the subject of a requirement for the purposes of a railway or highway, the Appeal Board may order that the land be taken, instead of the designation being removed or the requirement withdrawn, if in the Board's opinion the fact that any adjoining land will continue to be designated or be the subject of a requirement is likely to result in the owner being unable to sell his land.

If only part of any land is designated or the subject of a requirement, the Board may order that, if the designation is not removed or the requirement withdrawn, then all of the land be taken if to take only part of the land would be contrary to sound town and country planning principles or to the provisions of any district scheme.

Clause 15 amends the Second Schedule to the principal Act, which sets out the matters to be dealt with in district schemes.

The amendment provides for the zoning or definition of areas to be used exclusively or principally for the present or future prospecting and working of mineral resources.

Hon. Mr Allen

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 1970, 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).

*Reprinted 1966, Vol. 4, p. 3223
Amendments: 1968, No. 29; 1969, No. 20

2. Interpretation—(1) Subsection (1) of section 2 of the principal Act is hereby amended by repealing the definition of the term “owner” (as inserted by section 2 (1) (1) of the Town and Country Planning Amendment Act 1966), and substituting the following definition:

“‘Owner’, in relation to any property, includes any person who has agreed in writing to purchase the property, whether conditionally or unconditionally:”.

(2) Section 2 of the Town and Country Planning Amendment Act 1966 is hereby amended by repealing paragraph (1) of subsection (1).

3. Contents of district schemes—(1) Section 21 of the principal Act is hereby amended by adding to subsection (7) (as added by section 13 (3) of the Town and Country Planning Amendment Act 1957) the words “Where any requirement has been made under this section and the Minister or local authority, as the case may be, determines that the requirement is no longer necessary, he or it shall forthwith notify the Council in writing that the requirement is withdrawn.”

(2) The said section 21 is hereby further amended by omitting from subsection (7A) (as inserted by section 15 (4) of the Town and Country Planning Amendment Act 1966) the words “the Council shall publicly notify the requirement”, and substituting the words “or of a notification that any requirement is withdrawn, the Council shall publicly notify the requirement or the notification of withdrawal”.

(3) The said section 21 is hereby further amended by omitting from subsection (8) (as substituted by section 15 (5) of the Town and Country Planning Amendment Act 1966) the words “Council shall formally”, and substituting the words “Council shall, unless it has been withdrawn, formally”.

4. Effect of designating land—(1) Subsection (2) of section 33A of the principal Act (as substituted by section 13 of the Town and Country Planning Amendment Act 1968) is hereby amended—

(a) By omitting the words “, local authority, or Council”, and substituting the words “or local authority”:

(b) By inserting, before the word “requires”, the words “notifies the Council that he or it”.

(2) Section 33A of the principal Act (as substituted by section 32 (1) of the Town and Country Planning Amendment Act 1966) is hereby further amended by inserting, after subsection (2), the following subsection:

- 5 “(2A) On receiving from the Minister or a local authority, under subsection (2) of this section, a notification requiring that any land be no longer designated, the Council shall thereupon, without further formality, alter the district scheme to show the removal of the designation and advise all persons
10 to whom the scheme has been sent under section 28 of this Act of the removal of the designation.”

5. Departure from district scheme—Section 35 of the principal Act (as substituted by section 35 of the Town and Country Planning Amendment Act 1966) is hereby amended
15 by adding the following subsection:

“(8) Any consent granted under this section shall lapse—

“(a) On the 1st day of December 1971, if it was granted before the passing of the Town and Country Planning Amendment Act 1970; or

- 20 “(b) On the expiry of a period of 2 years after the date on which it was granted, if it was granted on or after the passing of that Act—

unless the person to whom it was granted has established the use of the land or building concerned for the purpose in
25 respect of which the consent was granted before the 1st day of December 1971 or before the expiry of the 2-year period, as the case may be, or unless in the Council’s opinion he is continuing to make substantial progress towards establishing that use.”

30 **6. Offences and penalties in respect of failure to comply with district scheme**—Section 36 of the principal Act is hereby amended by adding to subsection (1) the following additional proviso:

35 “Provided also that, if a proposed or partly erected new building has not been used before the date on which the district scheme became operative, any use of the building which commenced after the expiry of a period of—

“(a) Two years after the date on which the Council consented to the erection of the building; or

- 40 “(b) Two years after the date of passing of the Town and Country Planning Amendment Act 1970—

whichever is the later, shall not be deemed to be an existing

use within the meaning of this section, unless the Council certifies that substantial progress has been made within the 2-year period towards the erection, or completion of the erection, of the building.”

7. Control of use of land for certain purposes—(1) Section 38A of the principal Act (as inserted by section 26 of the Town and Country Planning Amendment Act 1957) is hereby amended by inserting, after subsection (2), the following subsection: 5

“(2A) In allowing or refusing any application under this section, the Council shall have regard to— 10

“(a) The public interest; and

“(b) The likely effect of the proposed use on the existing and foreseeable future amenities of the neighbourhood, and on the health, safety, convenience, and economic and general welfare, of the inhabitants of the region.” 15

(2) The said section 38A (as so inserted) is hereby further amended by inserting, after subsection (3), the following subsection: 20

“(3A) In determining any appeal under this section, the Board shall have regard to the matters set out in subsection (2A) of this section.”

8. Constitution of Town and Country Planning Appeal Board—Section 39 of the principal Act is hereby amended by repealing subsection (7), and substituting the following subsections: 25

“(7) In respect of each member of the Board, the Minister of Justice may from time to time appoint a fit person to be the deputy of the member, which deputy may act in the place of the member while the member is prevented by illness, absence, or other sufficient cause, from performing the functions, powers, and duties of his office. While the deputy is so acting he shall be deemed to be a member of the Board. The fact that any deputy acts as a member of the Board shall be conclusive evidence of his authority to do so, and no person shall be concerned to inquire whether the occasion requiring or authorising him to do so has arisen or has ceased. 30 35

“(7A) A person appointed under subsection (7) of this section to be the deputy of the Chairman of the Board shall not be Chairman or Deputy Chairman by reason only of that appointment.” 40

5 **9. Special Appeal Board**—Section 39A of the principal Act is hereby amended by inserting in subsection (5) (as substituted by section 6 (2) of the Town and Country Planning Amendment Act 1969), after the words “written direction of the Chairman of the Number One Town and Country Planning Appeal Board”, the words “or, where that Chairman is absent or unavailable, on the written direction of the Chairman of the Number Two Town and Country Planning Appeal Board,”.

10 **10. Procedure of Board**—Section 40 of the principal Act is hereby amended by adding the following subsections:

“(10) Notwithstanding anything in this section, the Chairman of any Board, sitting alone, shall have jurisdiction to make any of the following orders:

15 “(a) An order on any application made in the course of an appeal:

“(b) An order that is not opposed:

20 “(c) An order in any appeal which the parties to the appeal agree should be heard and determined by the Chairman alone:

“(d) An order in any appeal where the matter in issue is substantially a question of law only:

25 “(e) An order made on the application of any party directing that any appeal should be heard and determined by the Chairman alone on the ground that the matter in issue is substantially a question of law only.

“(11) The powers conferred by subsection (10) of this section shall not be exercised by any Deputy Chairman.”

30 **11. Determination of appeals**—(1) Section 42 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

35 “(1A) For the purpose of hearing and determining any appeal, the Board shall have all the powers, duties, functions, and discretions that the body against whose decision the appeal is brought had in respect of the same matter.”

40 (2) The said section 42 is hereby further amended by inserting in subsection (3) (as substituted by section 43 (1) of the Town and Country Planning Amendment Act 1966), after the words “decision of the Board shall”, the words “, subject to section 42A of this Act,”.

12. Appeals on questions of law only—The principal Act is hereby further amended by inserting, after section 42, the following section:

“42A. (1) Where any party to any appeal to the Board is dissatisfied with any determination of the Board as being erroneous in point of law, he may appeal to the Supreme Court by way of case stated for the opinion of the Court on a question of law only. 5

“(2) Every such appeal shall be heard and determined by the Administrative Division of the Supreme Court. 10

“(3) The provisions of Part IV of the Summary Proceedings Act 1957, so far as they relate to appeals by way of case stated on questions of law only, shall apply, so far as they are applicable, to every appeal under this section. In the application of those provisions they shall be read as if— 15

“(a) References to the Magistrate’s Court or to the Magistrate or Justice or Justices were references to the Board:

“(b) References to the Registrar of the Magistrate’s Court were references to the Secretary of the Board: 20

“(c) References to the respondent or his solicitor were references to each of the other parties to the appeal before the Board.”

13. Persons injuriously affected may claim compensation—Section 44 of the principal Act is hereby amended by inserting in subsection (6), after the words “becomes operative”, the words “or within 1 month after the date of any final determination of the Board on an appeal, whichever is the later,”. 25

14. Designation or requirement to be removed or land to be taken—The principal Act is hereby further amended by inserting, after section 47, the following section: 30

“47A. (1) In this section, unless the context otherwise requires,—

‘Designated’ means designated for a public work in an operative or proposed district scheme under this Act; 35
and ‘designation’ has a corresponding meaning:

‘Designating authority’ means any person or local authority who or which has the financial responsibility for any public work in respect of which any land has been designated or made the subject of a requirement: 40

‘Land’ includes a leasehold estate or interest in land:
‘Owner’, in relation to any land, includes any person
who is in occupation of the land under any lease or
licence or any renewal thereof granted by the owner
5 of the fee simple of the land (other than a weekly or
monthly tenancy agreement):

‘Public work’ does not include a public reserve within
the meaning of the Reserves and Domains Act 1953,
a reserve within the meaning of section 37 of the
10 Auckland Regional Authority Act 1963, or afforestation:
tion:

‘Requirement’ means a requirement made in respect of a
public work under section 21 of this Act.

“(2) Subject to the provisions of this section, if the owner
15 of any land is unable to sell the land owing to it having been
designated or made the subject of a requirement, he may
apply to the Board for an order under subsection (3) of this
section.

“(3) On receipt of an application under subsection (2) of
20 this section, the Board, on being satisfied that—

“(a) The land has been offered for sale on the open market
in an adequate manner after the date on which it
was designated or made the subject of a require-
ment for a period of not less than 6 months; and

25 “(b) The owner of the land has been unable to enter into
an agreement for the sale of the land at a price
equal to or more than the market value the land
would have had if it had not been designated or
made the subject of a requirement; and

30 “(c) The fact that the land has been designated or made
the subject of a requirement is the principal reason
for such an agreement for sale not having been
entered into—

may by order give the designating authority the option of
35 either causing the designation to be removed or withdrawing
the requirement, as the case may require, or of taking the
land under the Public Works Act 1928 for the public work
in respect of which it was designated or made the subject of
a requirement.

40 “(4) Notwithstanding anything in subsection (3) of this sec-
tion, if any application is made under subsection (2) of this
section in respect of land that has been designated or made the
subject of a requirement for the purposes of a railway or high-
way, the Board may by order require the designating authority
45 to take the land under the Public Works Act 1928, instead

of causing the designation to be removed or withdrawing the requirement, if in the Board's opinion the fact that any land adjoining the applicant's land will continue to be designated or be the subject of a requirement for the purposes of a railway or highway is likely to result in the applicant being unable to sell his land. 5

“(5) If an application has been made under subsection (2) of this section, and only part of the applicant's land has been designated or made the subject of a requirement, the Board may include in any order made under subsection (3) of this section a requirement that, in the event of the designating authority not causing the designation to be removed or withdrawing the requirement, the authority take all of the applicant's land under the Public Works Act 1928, if in the Board's opinion to take only that part of the land that is designated or the subject of a requirement would be contrary to sound town and country planning principles or to the provisions of any proposed or operative district scheme. 10 15

“(6) If an owner of land makes an application under subsection (2) of this section he shall, if his land is taken under the Public Works Act 1928 following an order made by the Board under subsection (3) of this section, be deemed to have entered into an agreement with the designating authority for the taking of the land for the purposes of section 32 of the said Act. 20 25

“(7) Nothing in this section shall apply in respect of any land that is designated or the subject of a requirement if the designation or requirement does not necessitate the acquisition of the land by the designating authority.”

15. Matters to be dealt with in district schemes—The Second Schedule to the principal Act is hereby amended by inserting, after clause 1, the following clause: 30

“1A. The zoning or definition of areas to be used exclusively or principally for the present or future prospecting and working of mineral resources.” 35