The Position of the Crown in Relation to the Town and Country Planning Act 1953

by

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I. INTRODUCTION

Traditionally the Crown has occupied a special position at law, its rights being compendiously referred to as that of the Crown or the Royal prerogative.[1] This special position of the Crown is part of the common law, which forms part of the law of New Zealand today. It is, however, also recognised in a number of statutes, notably the Acts Interpretation Act 1924, which provides in section 5 (k):

> No provision or enactment in any Act shall in any manner affect the rights of his Majesty, his heirs or successors, unless it is expressly stated therein that His Majesty shall be bound thereby . . .

A similar enactment was held in 1880 by the Privy Council to be "substantially an affirmation of the general principle of law" that "the prerogative of the Crown cannot be taken away except by express words".[2] However the Privy Council has since departed from this attitude,[3] and it can now be said that Interpretation Acts no longer occupy the field of the prerogative.

Statutes in New Zealand affirming the Crown prerogative, and which relate to land use and control, include the Rating Act 1967,[4] and the Municipal Corporations Act 1954.[5]

[1] See generally 7 *Halsbury's Laws of England*, 3rd ed., 222-224.
[2] *Cushing* v. *Dupuy* (1880) 5 App. Cas. 409, 419, 420.
[3] *Dominion Building Corporation* v. *R.* [1933] A.C. 533.
[4] Section 4.
[5] Section 386.

There are also, however, a number of New Zealand statutes which expressly displace the Crown prerogative.[6] More importantly, the most recent decision of the Privy Council in this area[7] expresses the possibility of the Crown being bound by statutes other than expressly. In the *Province of Bombay* v. *Municipality of Bombay*[8] it was stated that the Crown may be bound by a statute by necessary implication, i.e.[9]

> where it is manifest from the very terms of the statute that it was the intention of the legislature that the Crown should be bound, then the result is the same as if the Crown had been expressly named.

Later in that case their Lordships stated that[10]

> [i]f it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its terms that its beneficial purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound.

When we turn to the Town and Country Planning Act 1953, it is noticed that there is no express provision concerning the overall relationship of the Crown to the Act.[11] Thus if the Crown is to be bound by this Act it must be established from the words of the statute that there is a necessary implication that the Crown be bound. Once this is established, issues dealt with by the Act which would otherwise be covered by the Crown prerogative will be determined in accordance with the Act. There is no room for the concurrent operation of the prerogative and the Act on any specific issue. In these circumstances the prerogative is suspended, superseded, or put in abeyance.[12]

The difficulty lies in deciding whether the "beneficial purpose"[13] of the Town and Country Planning Act 1953 would be "wholly frustrated", or the Act would be "unmeaning"[14] if the Crown were not bound by it. The old test of whether an Act is made for the public

[6] See, e.g., Section 4, Copyright Act 1962; s. 3, Wages Protection Act 1964; s.4, Insolvency Act 1967; also the First Schedule to the Crown Proceedings Act 1950. It is to be noted that the Crown Proceedings Act 1950, in s. 5 makes no change to the general law on the question of the relationship of the Crown to statutes.

[7] *Province of Bombay* v. *Municipality of Bombay* [1947] A.C. 58.

[8] [1947] A.C. 58.

[9] Ibid., 61.

[10] Ibid., 63.

[11] Section 2A, inserted in the principal Act by the Town and Country Planning Amendment Act 1957, limits the Crown prerogative, but only in relation to a minor and specialised matter, and is of little importance when discussing wider issues under the Act. See *Mt Wellington Borough* v. *Minister of Works* (1960) 1 N.Z.T.C.P.A. 122.

[12] For a discussion of this aspect of the Crown in relation to statutes see A. E. Currie, *Crown and Subject* (1953) 114-116.

[13] Supra, n. 10.

[14] *Gorton Local Board* v. *Prison Commissioners* [1904] 2 K.B. 165n.

good or not,[15] which was put forward by the respondents in the *Province of Bombay*[16] case, was rejected by the Privy Council in that case as unsound.[17] Their Lordships recognised the difficulties involved in determining whether the Crown is bound by any particular Act or not, saying that[18]

> if it be the intention of the legislature that the Crown shall be bound, nothing is easier than to say so in plain words.

This paper is concerned with the way in which the Town and Country Planning Appeal Board has interpreted the Town and Country Planning Act 1953 in questions involving the Crown, and what it sees the relationship of the Crown to that Act to be.

II. Decisions of the Town and Country Planning Appeal Board

The Town and Country Planning Act 1953 (hereafter referred to as "the Act"), came into force on February 1st 1954,[19] and the Board, set up under the Act,[20] has been hearing appeals under the Act since that date. A number of decisions involving the Crown have arisen, and a survey of these may help to determine what the Board sees the relationship of the Crown to the Act to be, and how it interprets its empowering Act when confronted with an issue involving the Crown. The relative importance of the tests outlined above,[21] and any guidelines the Board has developed, will also be discussed.

It has been seen that in general Acts of Parliament fall into two categories in their relationship to the Crown:

(a) those statutes which expressly bind the Crown.[22] The Crown is subject to the provisions of these Acts in the same way as any other person or body;

(b) those statutes which expressly exempt the Crown from their provisions.[23] In these cases the Crown is unaffected by the provisions of the Acts, or enjoys an immunity[24] to them.

[15] This test was stated as long ago as Bracton's time, and accepted in a number of old cases, last being approved without qualification in 1879 in *In re Bonham* 10 Ch. D. 595, 601. See Currie, op. cit., 109.
[16] Supra, n.8.
[17] [1947] A.C. 58, 62.
[18] Ibid., 63.
[19] Section 1 (2).
[20] Section 39.
[21] Ante, pp. 101-102.
[22] Ante, n.6.
[23] E.g. the Rating Act 1967 and the Municipal Corporations Act 1954.
[24] See further discussion of this immunity post pp. 109-110.

The cases to be discussed will show that in some instances a third relationship exists, where there is neither immunity or subjection of the Crown to the Town and Country Planning Act 1953. In these cases the Crown is seen to be able to override the power granted under the Act, thereby enjoying a position superior to the Act.

In *Wright* v. *Waimairi County Council*[25] the appellants were trustees for a large block of land immediately outside the urban zoning boundary or fence in Christchurch, and zoned rural. They were asking that it be zoned residential, the same as the adjoining block of land just inside the urban fence. One of the reasons why the Board dismissed the appeal was that the block of land immediately adjacent to that of the appellants and also outside the urban fence, was Crown land, and there was the possibility that the Crown was going to use its land for residential purposes itself. The Board endeavoured to ascertain the course of action likely to be taken by the Crown before it would reach a decision regarding the appellants' land, and in adopting this course of action was deferring to the Crown, subjecting considerations under the Act to the Crown's wishes. The Chairman of the Board, Kealy S.M., was able to introduce this relationship in view of his rather bald general opinion that "the Crown is not bound by the present Town and Country Planning legislation."[26] Furthermore it has been suggested[27] that this approach by the Board, giving priority to the Crown where there may be projected development of Crown land, would even be a ground for the amendment of a regional planning scheme.

It is not suggested that the decision in *Wright* v. *Waimairi County Council*[28] establishes the Crown unequivocally in a position of superiority in relation to the Act, but it does show a swing towards the acknowledgement of such a relationship. The cases about to be discussed show that generally the relationship of the Crown to the Act falls into one of the three categories suggested. On the basis of the Board's attitude in the cases it has decided, some principles may be discerned enabling prediction about the various fact situations which will recur.

1. *Category One*: *Provisions of the Act held binding on the Crown*

In *Minister of Works* v. *Marlborough County Council*[29] Kealy S.M. decided that the Board had no jurisdiction to hear the appeal, since

[25] (1963) 2 N.Z.T.C.P.A. 76.
[26] Ibid., 77. Regrettably Kealy S.M. gave no reasons or authorities to support this statement.
[27] See K. Robinson, *Law of Town and Country Planning* (2nd ed. 1968), 46.
[28] Supra, n.25.
[29] (1963) 2 N.Z.T.C.P.A. 87.

the appellant had not filed its notice of appeal on behalf of the Crown within the time prescribed in the Counties Act 1956;[30] and furthermore, on the ground that the notice of appeal had not been served within seven days of filing the appeal as required under the Town and Country Planning Regulations.[31] The Board adopted the principles laid down in *Province of Bombay* v. *Municipality of Bombay*[32] and found that these procedural provisions were mandatory and intended to bind the Crown. Accordingly as the Crown was in breach of them the Board had no jurisdiction to hear the Minister's appeal. This decision makes it clear that, procedurally at least, the Crown is bound by the provisions of the Act.

Two years later, however, the Supreme Court overruled the decision in *Minister of Works* v. *Marlborough County Council*.[33] In the case of *Ainge* v. *Town and Country Planning Appeal Board*[34] the Court held that failure to comply with some procedural requirement in an appeal under the Act did not deprive the Board of jurisdiction to hear the appeal insofar as the omission was inadvertent, and did not and was not likely to affect the substance of the town planning scheme in question.[35] This decision no doubt prompted the inclusion of section 40 (9) in the Act a few months later providing as follows:[36]

> The Board . . . may waive compliance with any requirement of this Act or of any regulation made under this Act as to the time or method of serving documents . . . and as to the documents to be served and the persons on whom any documents are to be served, if it is satisfied that no party to the proceedings will be prejudiced by the waiver.

Thus the Board now has a statutory discretion to waive compliance with procedural provisions of the Act in certain circumstances. While this discretion may be exercised in the Crown's favour, it is also of general application and may be exercised for the benefit of any party to proceedings before the Board. Thus no special privilege is accorded the Crown, and the general proposition enunciated in *Minister of Works* v. *Marlborough County Council*[37] that the Crown is bound in like manner to other parties by procedural provisions of the Act is still valid.

The case of *Timaru County Council v. Minister of Works (No. 1)*[38] shows a somewhat equivocal and cautious approach by the Board to the question of the Crown's relationship to the Act. Here the land

[30] Counties Act 1956, s. 451; see also Counties Amendment Act 1961, s. 33.
[31] Regulation 24 (6).
[32] Supra, n.7.
[33] Supra, n.29.
[34] [1966] N.Z.L.R. 385; (1965) 2 N.Z.T.C.P.A. 249.
[35] [1966] N.Z.L.R. 385.
[36] Town and Country Planning Amendment Act 1966, s. 42.
[37] Supra, n.29.
[38] (1964) 2 N.Z.T.C.P.A. 163.

concerned was a golf course, vested in the appellant Council, and the Minister of Works, exercising a power expressly conferred on him by the Act,[39] notified the Council of his intention to designate the area as a proposed school site in the District Scheme. The Council appealed, asking that this requirement be revoked. The Board allowed the appeal, suggesting that the Crown avail itself of other land it happened to own nearby.

However Kealy S.M. was guarded in his judgment. He acknowledged the merit of the Minister's requirement, and also the merit of having the golf course as a municipal reserve, and found himself faced with the choice of two alternatives, each with its disadvantages:[40]

(a) either revoke the requirement and cause the school to be situated at a slightly less convenient site; or

(b) "pick the eyes"[41] out of an important municipal reserve.

In deciding to allow the appeal and thus revoke the Minister's requirement, he concluded by saying:[42]

> It also seems proper to point out that, notwithstanding the present decision, action could still be taken by the Crown for the acquisition of the land in question under the powers contained in the Public Works Act. In view of the availability of an alternative site for the proposed intermediate school, the Board expresses the hope that such action will not be taken.

Hence, although deciding against the Crown on the basis of the Act, the Board acted with some diffidence, knowing that the Crown could take the land unilaterally by virtue of other statutory powers. The existence of these powers was sufficient to induce in the Board an attitude of consideration for, if not deference to, the wishes of the Crown in a planning dispute, recognising the existence of the third category introduced above, where the Crown is in a superior position to the Act.

Thus this case is an example of how the Crown can be variously regarded as in either the first or third suggested categories. The practical effect of the Board overruling the claim by the Crown is an example of the Crown's subjection to the Act; yet the Crown's independent position under another statute is clearly a factor which cannot be overlooked in this type of case.[43]

A question raised by this case is whether the Board's approach would have differed significantly if there had been no suitable alter-

[39] Town and Country Planning Act 1953, s. 20 (7).
[40] (1964) 2 N.Z.T.C.P.A. 163, 164.
[41] Idem.
[42] Idem.
[43] See discussion on this aspect post pp. 110-111.

native piece of Crown land which the Board was able to recommend the Crown to use. The merits of the case for both parties would have been more critical in this situation.

Such a case came before the Board some five years after the above decision, and here the Chairman, Luxford S.M., refused to show the deference to the Crown which characterised the *Timaru County Council*[44] case. In *Waimairi County* v. *Minister of Works*[45] the Minister had made a requirement that a certain piece of land, owned by the Crown, be designated as a school site. The County Council objected to this action and, as in the *Timaru County Council*[46] case, asked the Board to revoke the requirement, on the ground that the area was rural and a change of use brought about by the Crown in this manner would need to be noted on the District Scheme. Despite the fact that there was no alternative site available, the Board unhesitatingly allowed the appeal, effectively preventing the Crown from siting a school anywhere in the area. The requirement was removed completely, something the Board had done only a few years earlier with some considerable hesitancy in view of the Crown's independent statutory powers.

This last factor does not seem to have been considered at all by the Board in reaching its decision, nor the fact that the land in question was actually Crown land to start with. The case was decided purely on its merits, and within the powers contained in the Act, the Chairman saying that:[47]

> [t]he Board . . . is not satisfied it is in the public interest that such a school be established on the site referred to in the respondent's notice.

Later on the Board said:[48]

> In other words, the Board is of the opinion that the public interest will be better served by allowing the appeal and it is allowed accordingly.

The public interest factor is central to the Board's finding in favour of the appellant.

In *MacKay and Others* v. *Minister of Works*[49] the Board, using the same criterion of public interest, found in favour of the Minister, holding that in appeals of this nature[50]

> the real and substantial question to be determined is whether the public interest will be served by allowing the appeals or disallowing them.

Thus when applying the public interest test as in these last two cases, no special privilege is granted to the Crown.

[44] Supra, n.38.
[45] (1969) 3 N.Z.T.C.P.A. 184.
[46] Supra, n.38.
[47] (1969) 3 N.Z.T.C.P.A. 184.
[48] Idem.
[49] (1969) 3 N.Z.T.C.P.A. 195.
[50] Ibid.

The Act specifically provides for the consideration of public interest as an important factor in a number of planning areas. An example of this is the power conferred on the Minister of Works to prohibit absolutely or conditionally the carrying out of a subdivision or change of use where "in his opinion such use would be contrary to public interest".[51]

Again, a Council is empowered, when deciding whether or not to grant a departure from a District Scheme, to hold the public interest as "the paramount consideration."[52]

A third example is where the Act directs the Board, when hearing appeals, to adopt the same principles as the particular Council in relation to the granting of departures from a District Scheme "unless for reasons to be specified by the Board some dispensation is considered by the Board to be warranted in the public interest."[53]

The Board has, in considering matters before it, taken the view that the Act is undoubtedly one made in the public interest, and has invoked the public interest criterion even when the Act has not specifically stated that it is applicable.[54] Thus when an appeal relates to planning principles and techniques, the Board is guided by this criterion, even though the Crown is a party and its interests may be adversely affected in favour of another party.[55]

Section 38(14) of the Act, as already noted,[56] confers power on the Minister of Works to prohibit absolutely or conditionally a proposed work under a District Scheme if the public interest requires this. Now even though this is a clear discretion vested in the Crown, the Board has seen itself as the final arbiter as to what is or is not in the public interest. An example is the case of *Church Property Trustees* v. *Minister of Works*.[57] Here the Minister exercised his power by prohibiting a particular work, and although the Board considered that he had in fact acted in the public interest on this occasion, it was clearly reserving its own right to overrule the Minister if it came to a different conclusion.[58]

Similarly in *Robinson* v. *Minister of Works*[59] the Board agreed with the Minister's action under section 38(14), but not until it had itself applied the public interest test, saying:[60]

51 Section 38 (14).
52 Section 35 (4).
53 Section 35 (7).
54 E.g. *Waimairi County* v. *Minister of Works* (supra, n.45), *MacKay and Others* v. *Minister of Works* (supra, n.49).
55 As in *Waimairi County* v. *Minister of Works* (supra n.45).
56 Ante, n.51.
57 (1954) 1 N.Z.T.C.P.A. 81.
58 Idem.
59 (1966) 3 N.Z.T.C.P.A. 25.
60 Idem.

> [T]he criterion is not detraction from amenities, but any proposed work which would be contrary to public interest or might adversely affect any public work.

A further decision involving ministerial discretion under section 38(14) was *Duncan* v. *Minister of Works*.[61] In this case the Minister prohibited any other change of use in this area in the future.[62] Counsel for the appellant argued that the power conferred on the Minister under section 38(14) was to prohibit a specific change of use only, and did not amount to a power to make a general prohibition on any future change, and accordingly the Minister's prohibition was *ultra vires* and void.[63] The Board accepted this argument, thus reaffirming that the Crown is governed by the provisions of the Act when it acts under power conferred on it by the Act itself.

The conclusion to be drawn from all these cases is that the Crown is bound by the procedural provisions of the Act in the same way as other parties to disputes,[64] and must act *intra vires* when exercising any powers, discretionary or otherwise, conferred on it by the Act. Thirdly, where the Crown, by the Minister of Works, has entered the realm of planning principles and techniques, it becomes subject to the operation of the Act, and insofar as the Board, as an appellate body, differs on what the public interest criterion requires in any particular case, the Board's decision prevails.

It is relevant to note that the main areas in which the Crown does enter the realm of planning principles and techniques are:

(a) to preserve the rural scene and character of the landscape;[65]

(b) to prevent sporadic and ribbon development;[66] and

(c) to promote road safety.[67]

The public interest factor is paramount in these areas, and the Board is firmly established as the final arbiter in these matters.

[61] (1967) 3 N.Z.T.C.P.A. 55.
[62] Ibid., 56.
[63] Idem.
[64] Ante, p. 104.
[65] *Minister of Works* v. *Kaitaia Borough* (1956) 1 N.Z.T.C.P.A. 18; *Church Property Trustees* v. *Minister of Works* (1959) 1 N.Z.T.C.P.A. 81; *Minister of Works* v. *Horowhenua County* (1959) 1 N.Z.T.C.P.A. 145.
[66] *Minister of Works* v. *Taupo County Commissioner* (1959) 1 N.Z.T.C.P.A. 74; *Minister of Works* v. *Horowhenua County* (1959) 1 N.Z.T.C.P.A. 145; *Minister of Works* v. *Bay of Islands County* (1960) 1 N.Z.T.C.P.A. 131; *Minister of Works* v. *Geraldine County Council* (1966) 3 N.Z.T.C.P.A. 6.
[67] *Minister of Works* v. *Taupo County Commissioner* (1959) 1 N.Z.T.C.P.A. 74; *Minister of Works* v. *Bay of Islands County* (1960) 1 N.Z.T.C.P.A. 131; *Robinson* v. *Minister of Works* (1966) 3 N.Z.T.C.P.A. 25; *Minister of Works and Another* v. *Hawkes Bay County* (1967) 3 N.Z.T.C.P.A. 88.

2. *Category Two: Decisions showing the Crown's Immunity from the Operation of the Act*

In *Hutt Valley Electric Power Board* v. *Porirua City Council*[68] the appellant was seeking to establish whether or not the respondent council had the right to control, in its ordinances, such matters as wiring and other electrical works relating to the Power Board's operations, and also to the activities of the Post and Telegraph Department. Counsel for the Minister of Works, appearing to represent the Post and Telegraph Department in this matter, argued that in this area the Act did not bind the Crown, and cited the *Province of Bombay*[69] case and section 5(k) of the Acts Interpretation Act 1924 as authority for this. The Chairman of the Board, Kealy S.M., readily accepted this argument.[70]

This conclusion may be contrasted with that reached by the Board in *Minister of Works* v. *Marlborough County Council*[71] where the Board, also on the authority of the *Province of Bombay*[72] case, held that there was an implied intention in the Act that the Crown should, in that case, be bound. The distinction between the two cases is that the latter showed the Minister of Works entering the arena of planning principles and becoming involved in a way which led to the public interest being relevant. However in the *Hutt Valley Electric Power Board*[73] case the Crown, in the form of the Post and Telegraph Department, did not in any way take the initiative in becoming involved in planning principles. This decision demonstrates that where the Crown acts independently in a way not involving major questions of planning principle it will not be bound by the Act, so long as it does not act in contravention of specific provisions of the Act.

In *Minister of Works* v. *Ashburton Borough*[74] the respondent Borough had designated certain land which was vested in the Crown for a use other than the Crown's current use. In a short but clear judgment Kealy S.M. indicated that Crown land could not be designated under a District Scheme, thus indicating that Crown land within the total area enveloped by a council's District Scheme was immune from the zoning provisions of the Act. He said:[75]

> In the present case the land with which the appeal is concerned is already owned by the Crown, and the respondent council (although it desires to

[68] (1967) 3 N.Z.T.C.P.A. 34.
[69] Supra, n.7.
[70] (1967) 3 N.Z.T.C.P.A. 34.
[71] Supra, n.29.
[72] Supra, n.7.
[73] Supra, n.68.
[74] (1967) 3 N.Z.T.C.P.A. 84.
[75] Idem.

> acquire the said land) was not able to advise the Board of any way it would be able to do so save by voluntary negotiation.
>
> Under these circumstances it appears to the Board that the designation sought would have no legally binding effect and could consequently serve no useful purpose.

Thus the Board saw the Crown to be in the same position of immunity as it was in the *Hutt Valley Electric Power Board*[76] case, but for different reasons. The case is similar to an earlier one, *Minister of Works* v. *Upper Hutt Borough*,[77] in which an area of Crown land was similarly within an area subject to a District Scheme, and designated under the scheme for a use different from that for which the Crown had set the land aside. The Board refused to interfere with the Crown's intentions for the land, holding (as in the *Ashburton Borough*[78] case) that Crown land under a scheme cannot be designated by a Council in this way.

Thus the Crown, as titleholder of land within an area included within a District Scheme, is exempt from the zoning provisions of the Act. However in both the cases cited the Crown had not taken active steps to use its land for a special planning purpose.

It is submitted that if the Crown had in either case entered the sphere of planning principles with regard to the use of its land,[79] either on its own initiative or by consent, the Board may well have held the Crown bound by the provisions of the Act.

In summary, the Crown is in a position of immunity from the operation of the Act when

(a) it is represented in a minor and secondary capacity with respect to the Act;[80] or

(b) Crown land is within an area included in a District Scheme, provided the Crown makes no positive moves to enter the sphere of planning policy.[81]

3. *Category Three*: *Decisions tending to show the Crown in a superior position with respect to the Act*

Two cases discussed above will be relied on as showing the existence of this third possible relationship of the Crown to the Act. *Wright* v. *Waimairi County Council*[82] is an example of the Board deferring to the wishes of the Crown before deciding the zoning of a piece of land,

[76] Supra, n.68.
[77] (1957) 1 N.Z.T.C.P.A. 37.
[78] Supra, n.74.
[79] E.g., by setting the land aside for a school, as in the *Waimairi County Council* case (supra, n.25).
[80] *Hutt Valley Electric Power Board* case (supra, n.68).
[81] *Minister of Works* v. *Upper Hutt Borough* (supra, n.77). *Minister of Works* v. *Ashburton Borough* (supra, n.74).
[82] Supra, n.25.

and in *Timaru City Council* v. *Minister of Works (No. 1)*[83] the Board showed some hesitancy in overruling the decision of the Minister of Works.

The important point is that in both cases the Crown had powers to deal with the land in question independently of the Town and Country Planning Act 1953. In the *Wright*[84] case these powers were contained in the Housing Act 1955, expressly enabling the Crown to deal with its own land in certain ways related to state housing developments and associated projects like roading, drainage, pipe-line construction, and the creation of easements.[85] The Housing Act 1955 also empowers the Crown to take land for these purposes, if it does not have any or enough suitable land already, under a broad power vested in it to take land for public works in the Public Works Act 1928.

In the *Timaru*[86] case it was this power to take land for public works which the Board recognised the Crown as being able to exercise, effectively overruling any revocation of the Minister's requirement in terms of the Town and Country Planning Act 1953.[87]

In the *Wright*[88] case the use of a piece of Crown land by the Housing Division of the Ministry of Works was the same as the use for which an application for specified departure had been made in respect of the neighbouring piece of land. The Board refused the application with the explanation that it would be happy to grant it at such time as the Crown commenced developing its own land for the same particular use, so as to co-ordinate the development of that use in the area. Thus the Board was allowing the Crown to take the initiative with regard to the particular planning matter concerned. This departure from the Board's general attitude to the Crown taking such an initiative[89] is only satisfactorily explained in the light of the Housing Division's power to use its land (and other land if necessary) quite independently of the Town and Country Planning Act 1953. The specific power vested in the Crown by the Housing Act 1955 is seen to take precedence over the general powers vested in planning authorities under the Town and Country Planning Act 1953.[90]

[83] Supra, n.38.
[84] Supra, n.25.
[85] Housing Act 1955, Part I.
[86] Supra, n.38.
[87] This power is contained in s. 11 Public Works Act 1928. Section 2 defines a public work and includes any work of a local authority subsidised by Parliament, surveys, roads, bridges, quarries, and educational institutes, to mention a few.
[88] Supra, n.25.
[89] Ante, pp. 109-110.
[90] See *Maxwell on Interpretation of Statutes* (12th ed. 1969), 196-198, and the maxim *generalia specialibus non derogant.*

Although the Board in the *Timaru*[91] case revoked the Crown's requirement, it acknowledged that in spite of this refusal the Crown could achieve its aim by invoking other statutory powers. If the Crown were to do this, one can envisage situations where a District Scheme could be materially affected, to the extent that it would have to be altered by the local authority to accommodate the use introduced by the Crown.

IV. Conclusion

The relationship of the Crown to the Town and Country Planning Act 1953 can be seen, from the decisions of the Appeal Board, to fall broadly into the three categories outlined above. It is not a fixed or static relationship, but one that will vary with the circumstances of each case. General statements[92] to the effect that the Crown is not bound by the Act are inaccurate and misleading.

Where the Crown exercises powers conferred on it by the Act, and in procedural matters, it is subject to the Act in the same way as other persons or bodies exercising statutory rights or powers. Likewise the Board is the final arbiter of what is in the public interest where discretionary questions of planning and land use arise.

In cases where the Crown is associated with land under review pursuant to the Act, but in a manner not closely related to the particular use of that land, the Crown will be immune from the provisions of the Act. Similarly Crown land within an area subject to a District Scheme will be immune, so long as the Crown does not take the initiative in planning matters.

Clearly, however, the Crown can exercise statutory powers conferred on it other than under the Town and Country Planning Act 1953 independently of the Act, and in a manner which may effectively revoke a decision of the Board taken pursuant to the Act. Only in this limited area, though, is the Crown not either subject to the Act or in a position of immunity from the Act's operation.

[91] Supra, n.38.
[92] E.g., by Kealy S.M. in *Wright* v. *Waimairi County Council* (1963) 2 N.Z.T.C.P.A. 76.