

PAPER 4

THE TOWN AND COUNTRY PLANNING REGULATIONS
1978

K.W. BERMAN ESQ.
Barrister & Solicitor
Auckland

THE TOWN AND COUNTRY PLANNING REGULATIONS 1978

K. W. Berman LLB. DipT.P. MNZPI

The 1978 Regulations are substantially different from the 1960 Regulations in their setting out and approach. The 2nd schedule "notations for maps", 3rd schedule "suggested form of scheme statement", and 4th schedule "suggested form of Code of Ordinances" are gone. The new Regulations move logically through the planning processes following broadly the order in the Act as follows:

- Part I Regs. 3 to 17 Regional Planning Schemes.
 - Part II Regs. 18 to 20 Control of Development Where No Operative District Scheme.
 - Part III Regs. 21 to 40 District Schemes.
 - Part IV Regs. 41 to 52 Maritime Planning Schemes.
 - Part V Regs. 53 to 72 Planning Tribunal.
- A Schedule which sets out certain prescribed forms.

It is difficult summarising the Regs. without providing merely an incomplete paraphrase of them. There are, however, some important and novel provisions which can usefully be highlighted. I therefore propose to tabulate and outline the Regs. and where appropriate add my comments. I emphasise that the outline is necessarily abbreviated and cannot be relied on as a substitute for a reference to the full text of the Regs.

PART I - REGIONAL PLANNING SCHEMES

- R. 3. Contents of regional planning schemes.
- R. 4. Preparation of scheme by sections.

The Act and Regs prescribe the steps to be taken to establish a Regional Planning Scheme. There are in effect four stages. Stage I - calling for submissions as to contents of scheme.

- R. 5. Public notification of intention to prepare regional planning scheme.
Council shall publically notify its intention of preparing a scheme.

Invite submissions from any body or person allowing not less than two months.

Advise listed bodies.

- R. 6. Submissions on matters recommended for inclusion in regional planning scheme.

Any interested body can make submissions within the time specified in the notice.

The Council shall consider the submissions and may convene a meeting.

The rights of objection to a regional scheme are much broader than under the 1953 Act. There is no right of "cross objection" or right of audience. Any hearing is at the Council's discretion.
Stage II - Draft scheme.

- R. 7. Preparation and public notification of draft regional planning scheme.

The Council shall have regard to the submissions in its preparation of the draft scheme. The draft scheme shall be accompanied by a report.

The Council shall by public notice call for submissions and advise listed bodies allowing at least four months.

- R. 8. Submissions on draft regional planning scheme.

Local authorities may require a meeting with the Council, but other bodies may be heard only at the Council's discretion.

Again there is no right of "cross objection" or, except in the case of a local authority, of a hearing.

Stage III - Proposed Regional Scheme.

- R. 9. Preparation and public notification of proposed regional planning scheme.

The Council shall revise and amend the draft scheme and promulgate it as a proposed scheme.

- R. 10. Local authority request for inquiry.

(1) The request for an inquiry under S.12(2) shall specify matters to be inquired into, and the reasons - see R.59(1).

(2) If agreement is not reached under S.12(9) the Council shall refer the matter back to the Tribunal "on the expiration of 3 months after receipt of the report".

The Regulation and Section 12(9) do not correspond. The Act says that after 3 months the matter may be referred back whereas the Regulations say that on the expiration of three months the matter shall be referred back. While it may appear from the Regulations that the reference back must be made immediately after 3 months, the permissive terms of the Act would prevail.

- R. 11. Reference of scheme to Minister.

- R. 12. Reference to Tribunal.

- R. 13. Direction to amend scheme.

These Regulations provide for the Minister to require provision be made for matters of national importance, for reference to the Tribunal under S.13(3), and for amendment to meet the Minister's requirements.

There is a heavy emphasis throughout the formulation of regional and district schemes on a "conciliation" type of proceeding.
Stage III - Approved Regional Planning Scheme.

- R. 14. Public notification of approval.
- R. 15. Distribution of copies of approved regional planning scheme.

After approval the scheme is distributed to listed persons.

As far as practicable copies are to be available for purchase to anyone.

- R. 16. Procedure for change of approved sheme.
- R. 17. Procedure for review of approved sheme.

PART II - CONTROL OF DEVELOPMENT WHERE
NO OPERATIVE DISTRICT SCHEME

Regs. 18, 19 and 20 cover S. 33 (S.38A 1953 Act) applications which one would hope are nearly redundant.

PART III - DISTRICT SCHEMES

The Formulation of the District Scheme

- R. 21. Contents of district scheme.
- R. 22. Requirements as to maps.

There is provision for inset maps. Maps should be on a base which includes sufficient detail to identify properties in relation to particular ordinances, designations etc.

Designations are now often very fully described in district schemes rather than the earlier practice of merely noting them briefly on the map. This regulation should encourage a full explanation of a designation in the text of a scheme, but the map should include a reference to that text. Under the 1977 Act only public works, which includes proposed public works, are designated.

- R. 23. Preparation of district scheme - Every district scheme shall be prepared and presented in such a manner that -
- (a) Every provision of the scheme which applies to any particular area or property may be readily found; and
 - (b) The relationship between particular objectives and purposes and the controls, prohibitions, and incentives to achieve them can be ascertained.

This regulation calls for far better cross referencing than has been apparent in many schemes. As schemes have become more complex it has become necessary to read them from front to back to be sure that all the relevant provisions have been read. The regulation also emphasises the need and desirability of explaining the reasons for imposing controls. For too long, these could only be surmised.

- R. 24. Submission of scheme and inclusion of public works.

Before a scheme reaches the "proposed" stage, it is provisionally approved and forwarded to public bodies so that their requirements can be incorporated.

- R. 25. Public notification of proposed scheme. Three months are allowed for objections although this time can be extended.

- R. 26. Submissions and objections.

A form of objection is prescribed, which should include "where an alteration to the proposed scheme is sought, details of the alteration proposed".

While "grass roots" forms of objection will continue to have legal validity (see N.Z. Institute of Agricultural Science Inc v. Ellesmere County [1976] 1 N.Z.L.R. 630), there can be real

benefits in basing an appeal on a full and well formulated objection. The Appeal Board has emphasised that it is not a planning authority which will draft and devise ordinances for the parties. Its function is to adjudicate on proposals advanced by the parties.

R. 27. Summary of requests for alterations.

This regulation provides for a public notice summarising "requests for alterations to the scheme received" and provides for "cross objections".

I doubt if this is substantially different from the old requirement (S. 23(2) 1953 Act) for "a summary of the subject matter of the objection". The new provision perhaps places more emphasis on the result sought by the objector.

R. 28. Variation of proposed scheme.

When a proposed scheme and a variation of it reach the same stage of procedure, they merge. Existing objections or appeals against the scheme are deemed to be objections against the variation.

This provision covers the problem that previously existed when a variation to a proposed scheme was introduced to vary a proposed scheme in circumstances when the amendment did not satisfy the objections. The objection and appeal procedure was needed for both the scheme and the variation. The draftmanship is not as clear as it might be. I interpret the proviso to mean that an appeal against a provision in a proposed scheme is deemed to be an objection against a provision in a newly introduced variation and is treated as such without any step from the party. It is not clear whether the appeal will lapse or remain on foot until the fate of the revived objection is known.

R. 29. Hearing of submissions and objections.

R. 30. Witnesses.

These provisions are similar to the old Regulations.

R. 31. Decisions of Council.

A Council is required to give reasons for its decision. In relation to a public work, the procedure in S.118(5) to (10) applies.

S.118 strengthens the Council's hand in persuading a designating authority to change its requirements. It may make recommendations to the authority which is, however, free to reject such recommendations.

R. 32. Approval of district scheme.

The operative scheme is distributed to the listed bodies and copies are available to the public for purchase.

R. 33. Changes to district scheme.

The same procedure applies commencing at R. 25. The time for objection is reduced to 1 month.

R. 34. Statement of objectives on review of district scheme.

Emphasis is placed on the early involvement of the public and public authorities.

R. 35. Procedure for review of district scheme.

Commence the procedure at R.25.

Application Procedure

R. 36.

36. Applications made without notice—(1) Where any decision is made by the Council on an application which is made without notice, the Council shall give the applicant written notice of its decision. Where the decision is made by any officer of the Council acting under any authority delegated under the Act, the applicant shall be advised of his right to have the decision reviewed by the Council.

(2) Where any application is made under section 88 (2) of the Act for a review of the decision of any officer or officers of the Council, the Council shall hear the application as if it were an application made with notice and the provisions of regulation 38 of these regulations shall, so far as they are applicable with the necessary modifications, apply accordingly.

I have some doubts as to whether the review can be delegated by Council or whether it should be by the full Council. The express terms of S.88(3) may override the general power of delegation contained in S. 87, although if that view were correct the review procedure would be a little cumbersome.

R. 37.

37. Applications made with notice—(1) Every notified application shall be in form A set out in the Schedule hereto or to the like effect.

(2) The Council may require the applicant to supply such further details or plans as in the Council's opinion are necessary for a reasonable understanding of the application.

(3) The Council shall within 14 days after receipt of the application, or within 14 days after receipt of any further details or plans required by the Council under subclause (2) of this regulation, serve copies of the application and a notice in form H set out in the First Schedule hereto on such bodies and persons as the Council considers to have a greater interest in the application than the public generally and on the united or regional council, the Commissioner of Works, and the District Commissioner of Works. The Council shall also advise the applicant of the bodies and persons on whom service has been effected.

(4) The Council shall, within 14 days after receipt of the application, or within 14 days after receipt of any further details or plans required by the Council under subclause (2) of this regulation, publicly notify the application and call for objections in form I set out in the First Schedule hereto or to the like effect.

(5) The time for receiving objections shall be not less than 21 days after the date of public notification:

Provided that, if the date of the public notification falls within the period commencing on the 10th day of December and ending with the 31st day of January next following, the date by which objections are required to be lodged shall be not earlier than the 10th day of February in that next year.

(6) Every objection to an application shall be in form J set out in the First Schedule hereto or to the like effect, and shall include the name and address of the person making the objection and the reasons for the objection.

(7) As soon as practicable after lodging the objection with the Council, the objector shall serve a copy of the objection on the applicant.

(8) A reasonable share of the actual cost of the public notification required under this regulation, but not exceeding \$20 in any one case, shall be payable by the applicant.

The application procedure is simplified so far as the applicant is concerned. He simply lodges his application and the burden is then on the Council.

It can be expected that the public notice procedure will be more effective. Instead of having to look at 12 public notice columns each week, an interested citizen need only look at one. I hope that the "as far as is practicable" provision is not abused by Councils. The forms referred to in R.37 are set out hereunder:-

Form A

Regs. 20 (1), 37 (1)

The Town and Country Planning Act 1977
Application for Planning Consent

To the Council.

I, [State full name of applicant] hereby apply for [State fully what is proposed]

The property in respect of which this application is made is situated at No. Street/Road [State locality or if there is no street address give general description of location]

I am the [State whether owner, lessee, etc.] of the property.

Name of owner Address

Name of occupier Address.....

Dated at this day of 19.....

Signature

[To be signed for or on behalf of applicant].

Address for service

Form H

Reg. 37 (3)

The Town and Country Planning Act 1977
Notice of Application for Planning Consent

To

The attached application for planning consent has been received by the Council.

Additional plans or other information are (are not) held in the Council's office and may be inspected there during normal office hours.

The application is being advertised and objections will be received by the council until 4 p.m. on [Insert date being not less than 21 days after the date of public notification]. Any objection shall be in writing in form I prescribed in the First Schedule to the Town and Country Planning Regulations 1978 or to the like effect and should be addressed to the Council, P.O. Box [Town].

A copy of every objection must also be sent to the applicant as soon as possible.

Dated

For the Council.

Form I

Reg. 37 (4)

The Town and Country Planning Act 1977

..... District Scheme

Public Notification of Applications for Planning Consents

Details of the applications for planning consent listed below may be examined in the office of the Council during normal office hours. Objections can be made by notice in writing in form I prescribed in the First Schedule to the Town and Country Planning Regulations 1978 or to the like effect and should be addressed to the Council, P.O. Box, [Town] by [Date]

A copy of any objection must also be sent to the applicant.

Address Applicant Proposal
.....
.....
.....

For the Council.
Date

Form J

Reg. 37 (6)

The Town and Country Planning Act 1977

Notice of Objection

To the Council.

Name [State full name]

Address

I object to the application of [State name of applicant] to [State proposal of applicant].

The particular parts of the application I oppose are

The reasons for my objection are

My objection would be met by [State action desired]

I do/do not desire to be heard in support of my objection.

Signature
[To be signed for or on behalf of objector].

Date

Address for service

There is clearly a misprint in Form I. The reference to "Form I" in the third line should be to "Form J".

R. 38. Hearing of applications.

The provisions of R. 29 and 30 are applicable.

The Council can recover up to \$200 from the applicant towards its costs.

The notice of decision shall include reasons

"and particulars of the section of the Act or provision of the scheme under which the Council is acting,"

This is an important provision. Under the 1953 Act if one applied under the wrong section, the Council could not grant the application under the appropriate section. S. 68 now permits this to be done. The provision in the Regulation ensures that the Council considers the statutory provisions and makes known under which section it purported to act.

R. 39. Cash deposits, penalties, and bonds.

The Council can require a cash deposit or a bond to ensure compliance with a condition of approval. This Regulation is authorised by S.175(j). The applicant is entitled to repayment on fulfilment of the condition.

Difficulties will arise in respect of conditions imposing continuing obligations e.g. "To establish and maintain a hedge along the boundary". Can the applicant who sells obtain a release from his bond? It would be unjust if he could not, but the Council has no power to require a bond from the purchaser.

R. 40. Requirements for public works.

A statement explaining the requirement and the reasons for it is to be provided for explanatory purposes only. The Council must within 14 days publically notify the requirement and serve copies of the requirement and the explanatory statement on affected persons.

The provisions of S.118 apply.

PART IV - MARITIME PLANNING SCHEMES

I do not propose to examine these regulations in detail. In broad

terms, the procedure follows that for the formation and administration of a district planning scheme.

PART V - PLANNING TRIBUNAL

R. 53. Definitions.

R. 54. Lodging of documents.

Six copies are required.

R. 55. 55. Commencement of proceedings—(1) Every proceeding brought before the Tribunal shall be commenced by lodging notice of it in writing at the office of the Registrar in Wellington and, in the case of an appeal, by serving a copy of the notice of appeal on the body whose decision is appealed against (in this Part of these regulations referred to as the respondent).

(2) Every such notice shall be signed by or on behalf of the body or person commencing the proceeding or by its or his counsel or duly authorised representative.

To commence an appeal the notice must be lodged with the Tribunal and served on the respondent. The proceedings are not properly commenced unless both steps are taken within the time specified for appeal. It will make last day appeals against out-of-town council's decisions doubly troublesome. It is bad enough already without a Registry of the Tribunal in Auckland.

R. 56. Appeals.

The prescribed form N is set out below.

The appeal may be against part. The notice shall give full particulars of the decision, and the grounds, and shall annex a copy of the application and objection. Those persons to be served with the appeal are listed.

Form N

Reg. 56 (1)

Notice of Appeal Under [*Specify Act*]

TAKE notice that [*State full name and address of appellant*] hereby appeals against the decision of [*State name of respondent*] delivered on the day of 19..... and received by the appellant on the day of 19.....

1. The appellant's interests are as follows:

- (a) [*State, where applicable, whether as owner or occupier of land affected, or an objector, etc.*].
 (b) [*Description, where applicable, of land affected or provision in respect of which the appeal is made*].

2. The decision/determination/requirement/notice in respect of which this appeal is made is: [*Set out details of the decision/determination/requirement/notice*].

3. The grounds on which this appeal is based are:

4. The appellant seeks the following relief:

Dated at this day of 19.....

.....
 Signature.

Address for service

Telephone number

Annexure

The names of all persons, or local or public authorities, who or which appeared or were represented at the hearing giving rise to this appeal are as follows:

R. 57. Reply to appeal.

R. 58. Notice of hearing of appeal.

The notice of hearing is 21 days reducible by the Chairman to one week.

R. 59. Request for inquiry.

The request shall specify the matters arising and the amendments sought. S. 119 requests shall state the Council's recommendations. Listed persons shall be served including local authorities which may be affected.

Inquiries may affect several local authorities. They should be served. While S.12 and 13 do not make express provision for affected local authorities to be heard at an inquiry, S.157 gives them that right.

R. 60. Reply to request for inquiry.

R. 61. Notice of objectors.

R. 62. Notice of hearing of inquiry.

21 days notice is required.

R. 63. Reference for final determination.

A reference back under S.12(10) is by notice of motion. Any further hearing is at the Tribunal's discretion.

R. 64. Distribution of report following inquiry.

R. 65. Other originating applications.

Other applications are by notice of motion accompanied by an affidavit which must be served within 7 days on the other parties.

The normal form of motion includes a gap for the insertion of a date of hearing. This is inappropriate for this Tribunal as the date is not known. Under R.66 the other parties will not be advised of the date of hearing unless they request it within 21 days. An amendment to R. 65 is desirable requiring that the form of motion include in it a notice to that effect.

R. 66. Hearing of originating applications.

A person who wishes to be heard must advise the Registrar within 21 days of service.

14 days notice of the hearing is required.

R. 67. Applications in the course of proceedings.

Ex parte applications may be by letter submitted in duplicate. Other applications are by motion filed in duplicate.

R. 68. Adjournments.

Matters adjourned before a hearing will be given full notice, but matters adjourned at a sitting can be brought on on 7 days notice.

R. 69. Appeals under Water and Soil Conservation Act 1967.

The Regulation incorporates the previous practice of hearing related appeals under both Acts together.

If the respondent based its decision on a report, the appellant must, within 14 days of appealing, lodge a statement admitting or denying the matters of fact contained in the report.

R. 70. Decisions of Tribunal.

R. 71. Amendment of regional, district, and maritime planning schemes following decisions of Tribunal.

The Tribunal provisions are much more logical and comprehensive than those in the old Regulations. There is a clear distinction between appeals, inquiries, and other originating applications. Separate appropriate forms and procedures are prescribed.

Reg. 69 requires the parties to narrow the issues of facts very early in the procedure. While there are no comparable provisions in relation to Town & Country Planning Act matters, a stronger move amongst practitioners towards an informal settlement of factual issues would save much time and cost.

Assessment

I have highlighted some provisions in the Regulations which require special attention or consideration. The Regulations were formulated by Government officers in close consultation with representative groups of planners, lawyers, and other interested persons. The benefit of such consultation is apparent in the logical and practical form the Regulations have taken. They can be expected to work smoothly with little need for addition or amendment.