the respondent had expended money on it. This in the learned President's view was more than mere knowledge for the purposes of s. 182 and amounted to fraud.

Legislation

The Rent Appeal Act 1973 provides for the setting up of Rent Appeal Boards with the function of assessing, on application from either landlord or tenant, equitable rents. In making such an assessment the Board is to take into account the matters referred to in s. 8 and such assessments are to remain in force for one year. There is provision in s. 9 (1) for the rehearing of applications and in s. 12 for appeals to the Supreme Court on questions of law.

D. J. Clark.

PLANNING LAW

Operative district scheme — conditional use

In *Pap* v. *Onehunga Borough Council* (1973) 4 T.C.P.A. 347 the appellant had applied under s. 28C for consent to erect a factory in addition to existing factory premises. The Council in granting its consent imposed as one of the conditions that an existing building on the site be removed because it did not comply with the fire resistant ratings for the area. The Appeal Board held that the power to make conditions under s. 28C (3) is to be construed as limited to the imposition of conditions with respect to matters relevant to the implementation of planning policy in accordance with the Act and the District Scheme and that the cessation of uses which are existing uses under s. 36 of the Act or the demolition of existing buildings in which such uses are being carried on, for the sole reason that the buildings do not have the fire resistance ratings which would be required for new buildings, cannot be made a matter of planning policy. The condition was therefore held to be unreasonable and void.

Operative district scheme — change or review — specified departure

In *Auckland Gliding Club* v. *Franklin County* (1973) 4 T.C.P.A. 355 an application for specified departure from an operative district scheme was made under s. 35 of the Act. Between the date of application and date of hearing public notification of a change in the District Scheme was given under s. 30A. The Appeal Board held that where such a situation arose the proper procedure to follow was for the applicant to lodge an additional application under s. 30B. The applications would then normally be heard together but separate decisions would be given in the terms of each section. In *MacDonald* v. *Dunedin City* (1973) 4 T.C.P.A. 305 an application was lodged under s. 30B but before the matter was finally disposed of the change was implemented.

The Appeal Board held that in such case a new application under s. 35 must be filed.

Proposed district scheme — change of use — locus standi to object

In *Highland Park Progressive Association Inc.* v. *Wellington City Council* [1974] 1 N.Z.L.R. 108, 4 T.C.P.A. 405, the appellant, which was an incorporated association of residents in the area in which the applicant's land was situated, appealed against a consent to a change of use granted by the respondent Council under s. 38A. The *locus standi* of the appellants was challenged and the Supreme Court held that ss. 28C, 30B, 35 and 38, especially as contrasted with s. 24 (which refers to objections to proposed district schemes only), do not embrace an organisation or society of persons associated for any purpose of public benefit or utility and acting on the ground of public interest.

Proposed district scheme — locus standi to object

The *locus standi* of objectors arose in *Rogers* v. *S.T.C.P.A.* [1973] 1 N.Z.L.R. 529 where three individuals lodged an objection to a proposed district scheme on the grounds of public interest. The Supreme Court held that they had no *locus standi* as they were unable to show their property was materially affected by the provision objected to and they were not within s. 24.

Proposed district scheme — specified departure — tests to be satisfied

Section 35 deals with specified departure to both operative and proposed district schemes and by subs. (2) requires that certain strict tests must be satisfied before a council may consent to such a departure. It was conceivable that an applicant who wished to depart from the provisions of a proposed district scheme could also apply to the council for consent under s. 38A as opposed to s. 35 and so avoid fulfilling the rigorous requirements of the latter section. The matter was laid to rest by the Appeal Board last year in *Lund* v. *Timaru City* (1973) 4 T.C.P.A. 431. Here application was made under s. 38A for permission to change the use of land. The proposed new use was industrial and under the proposed district scheme the land was zoned residential. When the matter came before it the Appeal Board held it had no jurisdiction as application should have been made under s. 35. The Board held that it is only when a change of use is in conformity with a proposed district scheme that s. 38A is applicable. In all other cases application must be made under s. 35.

Sub-division — discretion to order reserve fund contribution

The powers given local authorities under s. 351C of the Municipal Corporations Act 1954 to order a sub-divider to make a cash contribution as an alternative to setting aside an area for reserve was discussed in *Bell Television* v. *Mt. Eden Borough* (1973) 4 T.C.P.A. 363. The Council in this case had approved a plan for sub-division by the company on the condition that it make a cash reserve contribution. The Appeal Board held that s. 351C conferred a discretionary power on local authorities

to require a cash contribution where the setting aside of land would be undesirable or unnecessary and the reasons why the setting aside of land is unnecessary or undesirable are pertinent to the proper exercise of that discretion. Here, as evidence was given that the respondent Council did not intend to acquire any further reserves in its area, and as there was no evidence to say that proposals for developing existing reserves could not be financed out of general revenue, the Appeal Board held that this was a proper case where a cash contribution should not be required.

C. A. Mallon.

PUBLIC INTERNATIONAL LAW

Nuclear Tests Case (New Zealand v. *France)*

Perhaps no other recent issue involving international law has so sensitised opinion within and outside New Zealand and attracted such international commentary as the atmospheric nuclear testing programme undertaken by France in the South Pacific since 1966.

In 1963, prompted by the fact that its former base for conducting atmospheric nuclear tests, the Reggane Firing Ground in the Sahara Desert, was available only until July 1, 1967, the French Government decided to move its test centre to Mururoa Atoll in the Tuamotu Archipelago; the first series of tests in the atmosphere of this area was conducted between July and October 1966. Opposition to the French programme has been expressed by successive New Zealand Governments since the 1963 decision became known and official protests have been lodged in a series of diplomatic notes communicated to the French Ministry of Foreign Affairs, before the United Nations, at the Stockholm Conference on the Environment in 1972, at meetings of the South Pacific Forum and conferences of Pacific leaders, and most recently, during discussions in Paris involving the Deputy Prime Minister of New Zealand and representatives of the French Government. Quite apart from this variety of official action, other forms of protest, neither endorsed nor encouraged by New Zealand Governments, have been preferred by non-governmental organisations intent on evincing their opposition to the French programme.

On May 9, 1973, New Zealand lodged with the Registry of the International Court of Justice an Application instituting proceedings against France in respect of that country's nuclear testing programme in the South Pacific; on the same day Australia also lodged a similar Application. It was contended by New Zealand that France had violated the rights of all members of the international community and particularly those of New Zealand and of the territories — the Cook Islands, Niue and the Tokelau Islands — associated with the Applicant. In support of its Application New Zealand alleged that its monitoring