



ANALYSIS

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1971, No. 36

An Act to amend the Town and Country Planning Act 1953
[29 October 1971]

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

1. Short Title—This Act may be cited as the Town and Country Planning Amendment Act 1971, and shall be read together with and deemed part of the Town and Country Planning Act 1953 (hereinafter referred to as the principal Act).

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 land, means the person who is for the time being entitled to the rack rent of the land or who would be so entitled if the land were let to a tenant at a rack rent; and includes any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land while the agreement remains in force:”.

(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the requirement is no longer necessary, he or it shall forthwith notify the Council in writing that the requirement is withdrawn.”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shall publicly notify the requirement”, and substituting the words “or of a notification that any requirement is withdrawn, the Council shall publicly notify the requirement or the notification of withdrawal”.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Amendment Act 1966) the words “Council shall formally”, and substituting the words “Council shall, unless it has been withdrawn, formally”.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:

“(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 to whom the scheme has been sent under section 28 of this Act of the removal of the designation.”

5. 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:

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

“(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 district and of any other area affected by the application.”

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

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

6. 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:

“(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.

“(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.”

7. Special Appeal Board—Subsection (5) of section 39A of the principal Act (as substituted by section 6 (2) of the Town and Country Planning Amendment Act 1969) is hereby amended—

(a) By omitting the word “written”:

(b) By inserting, after the words “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 direction of the Chairman of the Number Two Town and Country Planning Appeal Board, or, where the Chairman of the Number Two Board is also absent or unavailable, on the direction of the Chairman of the Special Town and Country Planning Appeal Board,”.

8. Acting Chairman—The principal Act is hereby further amended by inserting, after section 39A (as inserted by section 10 of the Town and Country Planning Amendment Act 1963), the following section:

“39B. (1) If the Chairman of a Town and Country Planning Appeal Board is absent or unavailable or if for the time being there is no Chairman of a Board, the Chairman of any other Town and Country Planning Appeal Board may without further appointment act as the Chairman of the Appeal Board whose Chairman is absent or unavailable or for which there is no Chairman, as the case may be.

“(2) The fact that the Chairman of a Town and Country Planning Appeal Board acts as the Chairman of any other Town and Country Planning Appeal 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.”

9. 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:

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

“(b) An order that is not opposed:

“(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:

“(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.”

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

“(1A) Without limiting the powers, duties, functions, and discretions conferred or imposed on the Board under this or any other Act, the Board, for the purpose of hearing and determining any appeal, 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.”

(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,”.

11. Appeals to Supreme Court 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 proceedings before 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.

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

“(3) Within 14 days after the date of the determination the appellant shall lodge a notice of appeal with the

Secretary of the Board. The appellant shall forthwith deliver or post a copy of the notice to every other party to the proceedings.

“(4) Within 14 days after the lodging of the notice of appeal, or within such further time as the Chairman of the Board may in his discretion allow, the appellant shall state in writing and lodge with the Secretary of the Board a case setting out the facts and the grounds of the determination and specifying the question of law on which the appeal is made. The appellant shall forthwith deliver or post a copy of the case to every other party to the proceedings.

“(5) As soon as practicable after the lodging of the case, the Secretary of the Board shall submit it to the Chairman of the Board.

“(6) The Chairman shall, as soon as practicable, and after hearing the parties if he considers it necessary to do so, settle the case, sign it, send it to the Registrar of the Supreme Court at Wellington, and make a copy available to each party.

“(7) The settling and signing of the case by the Chairman shall be deemed to be the statement of the case by the Board.

“(8) If within 14 days after the lodging of the notice of appeal, or within such further time as may be allowed, the appellant does not lodge a case pursuant to subsection (4) of this section, the Chairman of the Board may certify that the appeal has not been prosecuted.

“(9) The Court or a Judge thereof may in its or his discretion, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this section for the lodging of a notice of appeal or the stating of any case.

“(10) Subject to the provisions of this section, the case shall be dealt with in accordance with rules of Court.

“(11) In this section, ‘Chairman’ means the Chairman or Deputy Chairman of the Board whose determination is being appealed against or, if that Chairman and that Deputy Chairman are absent or unavailable, the Chairman of any other Board.”

12. Appeals to Court of Appeal—The principal Act is hereby further amended by inserting, after section 42A (as inserted by section 11 of this Act), the following section:

“42B. The provisions of section 144 of the Summary Proceedings Act 1957 shall apply in respect of any determination

of the Supreme Court under section 42A of this Act as if the determination were made under section 107 of the Summary Proceedings Act 1957.”

13. Persons injuriously affected may claim compensation— Subsection (6) of section 44 of the principal Act is hereby amended—

- (a) By inserting, after the words “objection and appeal”, the words “to the Board”:
- (b) By inserting, 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,”.

14. Power to take land, etc.—(1) Section 47 of the principal Act is hereby amended by inserting in subsection (2), after the words “this section”, the words “and in section 47A of this Act”.

(2) The said section 47 is hereby further amended by repealing the proviso to paragraph (b) of subsection (3), and substituting, as a proviso to the said subsection (3), the following proviso:

“Provided that the amount of compensation payable for any land taken pursuant to an order of the Board made under this subsection shall be assessed as if no restriction on the use of any other land had been imposed by the scheme or by any scheme affecting adjacent land.”

15. 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:

“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; and ‘designation’ has a corresponding meaning:

“ ‘Designating authority’ means the Minister, the Council, or any 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:

“ ‘Land’ means the area of land that has been designated or made the subject of a requirement; and includes a leasehold estate or interest in such an area of land:

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

“ ‘Public work’ does not include national park purposes under the National Parks Act 1952, a public reserve within the meaning of the Reserves and Domains Act 1953, a reserve within the meaning of section 37 of the Auckland Regional Authority Act 1963, or afforestation:

“ ‘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 of any land who was the owner, or the spouse of the owner, of the land on the date on which it was designated or made the subject of a requirement, 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 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 requirement for a period of not less than 6 months or such shorter period as the Board considers reasonable because of any special circumstances; and

“(b) The owner of the land has been unable to enter into an agreement for the sale of the land at a price which is not less 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; and

“(d) The owner of the land has thereby suffered or will thereby suffer—

“(i) A financial loss, where the owner is, or was at the time the land was first offered for sale, occupying a dwelling on the land, or on any larger piece of land of which the land forms part, solely as a residence for himself and his family (if any); or

“(ii) Serious financial hardship, in any other case—

may by order give the designating authority the option of 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.

“(4) Before making an order under subsection (3) of this section, the Board may direct the applicant to take such further action as the Board considers reasonable in an attempt to sell the land.

“(5) Notwithstanding anything in subsection (3) of this section, 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 highway, the Board may by order require the designating authority 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.

“(6) 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 or any specified part 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 the provisions of any proposed or operative district scheme or would otherwise be unreasonable or inequitable.

“(7) 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.

“(8) Nothing in this section shall apply in respect of any land that is designated or the subject of a requirement if the execution, establishment, or operation of the public work in respect of which the land was designated or made the subject of a requirement will not necessitate the acquisition of the land by the designating authority.

“(9) The amount of compensation payable for any land taken pursuant to an order of the Board made under this section shall be assessed as if no restriction on the use of any other land had been imposed by the district scheme or by any district scheme affecting adjacent land.”

16. 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:

“1A. The zoning or definition of areas likely to be used exclusively or principally for the development of mineral resources.”

This Act is administered in the Ministry of Works.
