



## ANALYSIS

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1980, No. 167

An Act to amend the Town and Country Planning Act  
1977

[23 December 1980]

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 1980, and shall be read together with and deemed part of the Town and Country Planning Act 1977 (hereinafter referred to as the principal Act).

**2. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “district”, and substituting the following definition:

“ ‘District’, in relation to any Council or local authority, means the district of that Council or local authority; and, in relation to any Council, includes—

“(a) Any area whether above or below mean high-water mark and, if below mean high-water mark, whether or not it has been authorised to be reclaimed, on or in which, or on any proposed reclamation of which, any structure, excavation, or work is situated or proposed to be situated; and

“(b) Any reclaimed land or land for the time being authorised pursuant to the Harbours Act 1950 or any other Act to be reclaimed—

being an area or land which is adjacent to the district and which is not included in the district of any other Council or within an area administered by a Maritime Planning Authority.”

(2) The said section 2 (1) is hereby further amended—

(a) By inserting in the definition of the term “local authority”, after the words “principal function in a region or district”, the words “or area”:

(b) By inserting in the definition of the term “local authority”, after the words “being in every case a”, the words “person or”:

(c) By omitting from the definition of the term “specified departure” the words “or proposed district scheme”.

(3) Section 2 (3) of the principal Act is hereby amended—

(a) By inserting, after the words “The following”, the words “bodies and”:

(b) By omitting the words “section 110,”:

(c) By omitting from paragraph (b) the words “or maritime”.

**3. Consideration of proposed regional planning scheme—**Section 12 of the principal Act is hereby amended—

- (a) By omitting from subsection (1) the word “amendments”, and substituting the word “alterations”:
- (b) By omitting from subsection (11) the word “changes”, and substituting the word “amendments”.

**4. Review of regional planning scheme—**Section 21 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) A Regional Planning Authority may include in a review of its regional planning scheme any area within its region notwithstanding the fact that that area had not previously been provided for in its approved regional planning scheme.”

**5. Existing Regional Planning Authorities—**Section 23 of the principal Act is hereby amended by repealing subsections (2) and (3).

**6. Control of use of land for certain purposes—**(1) Section 33 (1) of the principal Act is hereby amended—

- (a) By inserting, after the words “commenced by any person”, the words “on or after the commencement of this Act and”:
- (b) By omitting the words “so commenced”, and substituting the words “commenced on or after the commencement of section 38A of the Town and Country Planning Act 1953”.

(2) This section shall be deemed to have come into force on the 1st day of June 1978.

**7. Contents of district scheme—**Section 36 of the principal Act is hereby amended by adding the following subsection:

“(8) A Council shall include in its district scheme such provision as it thinks necessary in respect of—

- “(a) Land used or to be used for any public work for which it has financial responsibility; and
- “(b) Other land, or any water, subsoil, or air space, in respect of which a restriction is necessary to ensure the safe or efficient functioning or operation of any such public work.”

**8. Public works to be included before public notification—**Section 43 (1) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) In respect of any other land, or any water, subsoil, or airspace, in respect of which a restriction is necessary to ensure the safe or efficient functioning or operation of such public work.”

**9. Public notification of scheme—**Section 44 (2) of the principal Act is hereby amended by omitting the words “by post”.

**10. Appeals—**(1) Section 49 (1) of the principal Act is hereby amended by adding the following proviso:

“Provided that if there is a right for a review of a decision under section 88 (2) of this Act, an appeal shall not be lodged until that right has been exercised, and the appeal shall be against the decision on review.”

(2) Section 49 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) In determining an appeal under this section against a provision included in the district scheme pursuant to section 36 (8) of this Act, the Tribunal shall have regard to—

“(a) Whether the proposed work is reasonably necessary for achieving the objectives of the Council;

“(b) Whether the site is suitable for the proposed work; and

“(c) The economic, social, and environmental effects of the proposal—

and may confirm, modify, or revoke the provision or may impose such conditions or restrictions in respect of it as the Tribunal thinks fit.”

**11. Validity of district scheme—**Section 53 of the principal Act is hereby amended—

(a) By inserting in subsection (1), after the word “changing”, the words “or review”:

(b) By inserting in subsection (2), after the word “change”, the words “or review”:

(c) By inserting in subsection (5) (b), after the word “change”, the words “or review”:

(d) By inserting in subsection (5) (c), after the word “change” in both places where it occurs, the words “or review”.

**12. Procedures for changes to operative district scheme—**Section 55 (1) of the principal Act is hereby amended—

- (a) By omitting the expression “52”, and substituting the expression “54”:
- (b) By omitting from the proviso the words “by post”.

**13. Statement of objectives—**Section 60 (2) of the principal Act is hereby amended by omitting the word “before”.

**14. Procedure for review of district scheme—**Section 61 (2) of the principal Act is hereby amended by omitting the words “(under section 44 of this Act) the scheme is ready for public notification”, and substituting the words “public notification is required to be given under section 44 of this Act”.

**15. Public utilities to be permitted throughout district—**(1) Section 64 (1) of the principal Act is hereby amended—

- (a) By inserting in paragraph (a), after the words “high-voltage lines”, the words “, other electric lines (other than service lines),”:
- (b) By adding to paragraph (c) the words “, including compressor stations associated with gas pipelines”:
- (c) By repealing paragraph (d), and substituting the following paragraph:
  - “(d) Pipes for the distribution and conveyance of hot water for district heating or as process heat, or ordinary or geothermal steam, and necessary incidental equipment.”:
- (d) By inserting in paragraph (g), after the word “channels”, the words “and pipes,”:
- (e) By inserting, after paragraph (g), the following paragraph:
  - “(ga) Lighthouses, navigational aids, and beacons.”.

(2) Section 64 (2) of the principal Act is hereby amended—

- (a) By inserting, after the word “body” in both places where it occurs, the words “or person”:
- (b) By omitting the expression “(c), (d), and (h)”, and substituting the expression “(b), (c), (d), (ga), and (h)”.

(3) Section 64 (3) of the principal Act is hereby amended by inserting, after the word “body”, the words “or person”.

**16. Specified departure from district scheme—**Section 74 (3) of the principal Act is hereby repealed.

**17. Works in conformity with proposed change, etc., permitted**—The principal Act is hereby further amended by inserting, after section 74, the following section:

“74A. Notwithstanding anything to the contrary in this Part of this Act or in the operative district scheme, where a proposed use of any land or building is a conditional use under that scheme, or is contrary to the provisions of that scheme, or requires consent to a dispensation or waiver, but—

“(a) Is in conformity with the provisions of a proposed new scheme or change or variation of the scheme, in respect of which—

“(i) The time for lodging objections has expired and against which no objection has been lodged; or

“(ii) If an objection was lodged, it has been dismissed or withdrawn and the time for lodging appeals has expired without any appeal being lodged; or

“(ii) If an appeal was lodged, it has been dismissed or withdrawn; or

“(b) Is in conformity with an objection made in respect of the provisions of a proposed new scheme or change or variation of the scheme, which objection has been allowed, and—

“(i) The time for lodging appeals against the allowance has expired without any such appeal having been lodged; or

“(ii) If an appeal was lodged, it has been dismissed or withdrawn—

then it shall be lawful to commence and continue that use without obtaining consent under section 72 or section 74 or section 76 of this Act.”

**18. Works contrary to proposed change, etc., prohibited**—Section 75 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

“(5) An application for the Council’s consent under this section shall be by way of a notified application.”

**19. Designation or requirement to be removed or land to be taken**—(1) Section 82 (1) of the principal Act is hereby amended by adding to the definition of the term “owner” the words “; and also includes a beneficial owner”.

(2) Section 82 (3) of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) The owner of the land has thereby suffered or will thereby suffer a financial loss or serious hardship—”.

(3) The said section 82 (3) is hereby further amended by adding the words “, within such reasonable period as may be specified by the Tribunal and subject to such conditions as may be so specified”.

(4) Section 82 (6) of the principal Act is hereby amended by inserting, after the words “subsection (3)”, the words “or subsection (5)”.

(5) Section 82 (7) of the principal Act is hereby amended by omitting the expression “36”, and substituting the expression “32”.

**20. Repealing power of Council to delegate to committees or Commissioners**—Section 87 of the principal Act is hereby repealed.

**21. Council may delegate to Council officers**—Section 88 (1) of the principal Act is hereby amended by omitting the words “this Part of”.

**22. Repealing provisions as to successors in title**—Section 89 of the principal Act is hereby repealed.

**23. Existing use may continue**—Section 90 (1) (a) (i) of the principal Act is hereby amended by omitting the word “; or”, and substituting the word “; and”.

**24. Offences in respect of use of land or buildings**—Section 92 (2) of the principal Act is hereby amended—

(a) By omitting the expression “committed”, and substituting the word “committed”:

(b) By omitting the expression “\$40,000”, and substituting the expression “\$50,000”.

**25. Offences in respect of land or buildings**—Section 93 (2) of the principal Act is hereby amended by omitting the expression “\$40,000”, and substituting the expression “\$50,000”.

**26. Additional powers for enforcement of district scheme**—(1) Section 94 (2) (b) of the principal Act is hereby amended—

(a) By omitting the expression “\$40,000”, and substituting the expression “\$50,000”:

(b) By omitting the expression “\$3,000”, and substituting the expression “\$12,000”.

(2) Section 94 (3) of the principal Act is hereby amended—

(a) By omitting the expression “\$40,000”, and substituting the expression “\$50,000”:

(b) By omitting the expression “\$3,000”, and substituting the expression “\$12,000”.

**27. Interim control within maritime planning area**—The principal Act is hereby amended by inserting, after section 102, the following section:

“102A. (1) This section shall apply to any maritime planning area or part of a maritime planning area in respect of which a maritime planning scheme is not operative, but shall not apply in respect of—

“(a) The establishment and operation of a marine farm in accordance with the Marine Farming Act 1971; or

“(b) The establishment, management, and control of a marine reserve in accordance with the Marine Reserves Act 1971.

“(2) Except with the consent of the Maritime Planning Authority, no use of any land, building, or area that is not of the same character as the use which immediately preceded it, and no activity or work, shall be commenced by any body or person on or after the date of the commencement of this section and before the date on which the maritime planning scheme or section of it becomes operative, and no such use, having been so commenced, shall be continued by any person if—

“(a) The use detracts or is likely to detract from the amenities of the area; or

“(b) The use is contrary to the provisions of a draft maritime planning scheme.

“(3) Application under this section to the Maritime Planning Authority for consent shall be in accordance with regulations in force under this Act.

“(4) Subject to sections 3 and 4 of this Act, in granting or refusing consent to any application under this section, the Maritime Planning Authority 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 area, and on the health, safety, convenience and economic,



cultural, social, and general welfare, of the people of the area and of any region or district affected by the application.

“(5) In consenting to the use of any land, building, or area under this section, the Authority may impose such conditions, restrictions, or prohibitions as it thinks fit.

“(6) Any body or person shall have the right to object to any application made under this section.

“(7) Every such objection shall be in writing and be lodged with the Maritime Planning Authority within the time prescribed by regulations in force under this Act.

“(8) The applicant and every body or person who has objected to the application shall have the right to be heard by the Authority, either personally or by its or his counsel or duly authorised representative, and to call evidence in support of its or his contentions, before the Authority makes a decision on the application.

“(9) The applicant and every body or person which or who objected to the application may, within 1 month after notification of the decision, appeal to the Tribunal against the Authority’s decision.

“(10) In determining any appeal under this section, the Tribunal shall have regard to the matters set out in subsection (4) of this section.

“(11) A refusal to grant consent or a prohibition under this section shall not have any effect after the maritime planning scheme has become operative for the area to which the refusal or prohibition relates.”

**28. Preparation of maritime planning scheme—**(1) Section 104 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) Subject to sections 3 and 4 of this Act, the scheme shall, in respect of any area above mean high-water mark included in the maritime planning area, make provision for such of the matters referred to in the Second Schedule to this Act as the Authority considers necessary or desirable.”

(2) Section 104 (5) of the principal Act is hereby amended by omitting the words “prepared or”, and substituting the words “prepared and”.

**29. Variation, change, and review of maritime planning scheme—**(1) Section 109 (1) of the principal Act is hereby amended—

- (a) By omitting the words “change or vary any provision of its”, and substituting the words “vary or change any provision of its proposed or operative”:
  - (b) By omitting the words “change or variation”, and substituting the words “variation or change”:
- (2) Section 109 (6) of the principal Act is hereby amended by omitting the words “change or vary or to review its maritime planning scheme”, and substituting the words “vary, change, or review its proposed or operative maritime planning scheme, as the case may require”.

**30. Maritime Planning Authority not disqualified by negotiations, etc.**—The principal Act is hereby further amended by inserting, after section 111, the following section:

“111A. (1) Any existing public authority appointed a Maritime Planning Authority pursuant to section 98 of this Act which owns or occupies, or has statutory control over, any land (including the bed of the harbour or sea) within a maritime planning area shall not thereby be prevented from entering into negotiations or completing an agreement with any other public authority, purchaser, lessee, licensee, developer, or any other body or person relating to the use and development of that land.

“(2) The Maritime Planning Authority is hereby authorised to carry out all the functions, powers, and duties conferred or imposed on it by this or any other Act, including the hearing, consideration, and determination of submissions, objections, and applications, notwithstanding that the public authority which is appointed the Maritime Planning Authority may have entered into negotiations or completed an agreement with any other public authority, purchaser, lessee, licensee, developer, or any other body or person, whether before or after being appointed the Maritime Planning Authority.

“(3) The fact that any such negotiations may have been entered into or any such agreement may have been completed as referred to in subsection (2) of this section before the Maritime Planning Authority has prepared its maritime planning scheme or proceeded to change or vary any provision of its maritime planning scheme, as the case may be, shall not of itself be a ground for challenging or questioning in any Court the validity of the Authority’s actions or decisions in that regard.”

**31. Requirements for public works**—(1) Section 118 (1) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) In respect of any other land, or any water, subsoil, or airspace, in respect of which a restriction is necessary to ensure the safe or efficient functioning or operation of such public work.”

(2) Section 118 of the principal Act is hereby further amended by inserting, after subsection (9), the following subsection:

“(9A) Particulars of all requirements shall be endorsed on or included in the copy of the scheme which is available for public inspection at the office of the Council, and written notice of the details of the requirements shall be lodged at the places where, and with the bodies with whom, the scheme is required to be lodged under this Act.”

**32. Work contrary to requirement prohibited**—Section 120 of the principal Act is hereby amended by adding the following subsection:

“(5) The provisions of this section shall, so far as they are applicable and with the necessary modifications, apply in respect of every provision included in a district scheme pursuant to section 36 (8) of this Act.”

**33. Outline plans of buildings to be submitted to Council**—Section 125 (1) of the principal Act is hereby amended by omitting the words “entrances and exits, and parking provisions”, and substituting the words “vehicular access and circulation, and landscaping provisions”.

**34. Deputies of members**—The principal Act is hereby further amended by repealing section 132, and substituting the following section:

“132. The Minister of Justice may from time to time appoint one or more fit persons to be deputy members of the Tribunal, and any person so appointed may act in the place of any member (other than the Chairman) of any Division of the Tribunal while that 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 Tribunal. The fact that any deputy so acts 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.”

**35. Power of Chairman sitting alone**—Section 135 of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) An order giving directions as to the service of any document:”.

**36. Enforcing orders for costs**—Section 148 (3) of the principal Act is hereby amended by omitting the expression “\$3,000” in both places where it occurs, and substituting in each case the expression “\$12,000”.

**37. Tribunal may waive requirements as to serving notice**—Section 154 of the principal Act is hereby amended by inserting, after the words “in force under this Act”, the words “or any other Act”.

**38. Tribunal may give directions as to service of documents**—The principal Act is hereby further amended by inserting, after section 154, the following section:

“154A. On application to the Tribunal in that behalf by the Council or any other person, the Tribunal may, notwithstanding any requirement of this Act or any other Act or of any regulations in force under this Act or any other 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, give such directions relating to the service of any document as it thinks fit.”

**39. Representation at proceedings**—Section 157 of the principal Act is hereby amended by omitting the words “In any proceedings”, and substituting the words “Except as provided in Part I and section 119 of this Act, in any proceedings”.

**40. Appeals to Court of Appeal**—The principal Act is hereby further amended by inserting, after section 162, the following section:

“162A. The provisions of section 144 of the Summary Proceedings Act 1957 shall apply in respect of any determination

of the High Court under section 162 of this Act as if the determination were made under section 107 of the Summary Proceedings Act 1957.”

**41. Council may delegate to committees or Commissioners**—The principal Act is hereby further amended by inserting, after section 169, the following section:

“169A. (1) Except as provided for in section 48 (1) of this Act, any Council may delegate to any committee constituted under section 104 of the Local Government Act 1974 (as enacted by section 2 of the Local Government Amendment Act (No. 3) 1977) such of its powers, duties, and discretions under this Act as the Council considers necessary.

“(2) Any such committee to which any such powers, duties, and discretions have been delegated may subdelegate to such subcommittee or Councillor as the Council may approve such of those powers, duties, and discretions as relate to any matter which is the subject of an application which may be made without notice.

“(3) In addition to the powers conferred by subsections (1) and (2) of this section, any Council having an operative district scheme may appoint any person, whether or not a member of the Council, to act as a Commissioner to whom the Council may delegate, generally or specially, its powers, duties, and discretions under this Act relating to any matter which is the subject of an application under this Act, for the purpose of making a recommendation to the Council in respect of the application.”

**42. Joint hearing of applications under this Act and Water and Soil Conservation Act 1967**—The principal Act is hereby further amended by inserting, after section 169A (as inserted by section 41 of this Act), the following section:

“169B. Where there are applications relating to the same subject-matter under both this Act and the Water and Soil Conservation Act 1967, the Council, the Maritime Planning Authority, and the Regional Water Board, or any committee, Commissioner, or standing or special Tribunal, as the case may require, may, on application to them in that behalf, hold joint meetings and hear the applications together.”

**43. Successors in title**—The principal Act is hereby further amended by inserting, after section 170, the following section:

“170A. Except where a contrary intention is expressed therein, every application under this Act, every objection made thereto, and every consent given by a Council or Maritime Planning Authority, and every decision of the Tribunal, shall be deemed to have been made by, or given for the benefit of—

“(a) The owner and occupier of the land to which the application relates; or

“(b) The objector—  
as the case may be, and his successor in title.”

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This Act is administered in the Ministry of Works and Development.

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