

Planning Appeals Board Bill (No 2)

EXPLANATORY MEMORANDUM

PART I—PRELIMINARY

Clause 1 provides for the title, the coming into operation of the Act, and for it to be divided into Parts.

Clause 2 provides for the Acts mentioned in the Schedule to be repealed or amended to the extent expressed therein. Also contains savings provisions with respect to various Acts and for the continuation and determination of appeals not finally determined before the commencement of this Act.

Clause 3 contains transitional provisions in relation to appeals which have not been finally determined at the commencement of this Act.

Clause 4 sets down the interpretation of certain terms used in the Bill.

PART II—PLANNING APPEALS BOARD

DIVISION 1—CONSTITUTION AND PROCEDURE

Clause 5 constitutes a Planning Appeals Board consisting of full-time and part-time members appointed by the Governor in Council. One of the full-time members is to be appointed as chief chairman by the Governor in Council. He is to be qualified for appointment as a Supreme Court Judge and he may be appointed or re-appointed for any period. Full-time and part-time members may be appointed or re-appointed for periods up to seven years. A number of full-time members may be nominated as senior members.

The clause also makes provision for resignation, removal and suspension from office of a member and for payment of salary and allowances and travelling allowances.

Clause 6: The Governor in Council may appoint as deputy chief chairman a legally qualified member who is a senior member.

Clause 7: Full-time members including the chief chairman shall not engage engaged in the hearing of an appeal, the period of his appointment shall be deemed The office of a member shall become vacant in certain circumstances, including where he has attained the age of 72. If the appointment of a member expires by reason of effluxion of time, or if he attains the age of 72 and at that time he is engaged in the hearing of an appeal, the period of his appointment shall be deemed to continue until that appeal has been finally determined.

Clause 8 provides for the appointment of acting members.

Clause 9: An act or decision of the Board shall not be invalid by reason only of a defect or irregularity in the appointment of a member.

Clause 10 provides for the Board to sit in divisions. The number of members on a division shall not exceed five; a division may consist of a single member. The chief chairman may sit alone as a single member division or as one of the members of a division. The member or members who are to constitute a

division shall be selected by the chief chairman who shall have regard to the need for members to have appropriate knowledge and experience in relation to the appeal to be heard. Where an appeal relating to use and development of land has been determined and a further appeal is lodged relating to that use or development, the chief chairman is to assign to the division at least one member of the division which made the earlier determination, unless he considers the circumstances do not make this appropriate. The member who conducted a compulsory conference is not to sit on the division which subsequently hears that appeal.

The clause also provides for the chief chairman or a senior member to be chairman of a division, for determination of questions of law by divisions, and for other procedural matters in relation to the functioning of divisions.

Clause 11 constitutes drainage divisions to deal with those matters presently dealt with by the Drainage Tribunal. Members of the drainage division may sit as members of other divisions.

Clause 12 makes provision where one or more members constituting a division ceases to be a member of the Board or otherwise ceases to be available for the purposes of the proceedings.

Clause 13 provides for disclosure of interest by members of the Board.

Clause 14 provides for the appearance of parties.

Clause 15: Where an appellant is not present or represented at the hearing of an appeal, the Board may dismiss the appeal. Where any other party to an appeal is not present or represented at the hearing, the Board may in certain circumstances hear and determine the appeal in the absence of that party.

Clause 16: An unincorporated association of persons may not be a party to proceedings before the Board, but in certain circumstances may make a submission to the Board.

Clause 17 makes provision for Ministerial submissions in respect of appeals.

Clause 18: Evidence before the Board may be given orally or in writing and in certain circumstances is to be given on oath or on affirmation or declaration. The Board is not bound by rules or practice as to evidence, but may inform itself in relation to any matter in such manner as it thinks fit. The Board may also in certain circumstances require a person by summons to appear before the Board to give evidence or to produce documents.

Clause 19: The Board is not required to conduct any proceeding in a formal manner, but is bound by the rules of natural justice and shall hear and determine appeals as quickly as is consistent with the requirements of justice.

Clause 20 provides that certain appeals may be dealt with together.

Clause 21: The chief chairman may give directions as to the arrangement of the business of the Board.

Clause 22: The chief chairman is to determine the times and places at which the Board shall sit.

Clause 23: Hearings of proceedings before the Board are to be in public, but the Board may exclude a person who commits an offence referred to in Clause 66.

Clause 24 provides for the appointment of a registrar and staff who are to be subject to the general control and direction of the chief chairman. The registrar is to keep a register in the prescribed form containing particulars of all appeals lodged with him and of determinations made by the Board.

DIVISION 2—JURISDICTION AND POWERS

Clause 25 sets down the legislation in relation to which the Board shall have jurisdiction to hear and determine matters.

Clause 26 provides for the form of appeal and that the chief chairman may require the appellant to lodge further particulars. Appeals are to be lodged within the times prescribed.

Clause 27 sets out the duties of the registrar after an appeal is lodged. Also provides for certain persons and bodies to become parties to an appeal.

Clause 28 makes provision for appeals under the *Town and Country Planning Act 1961* relating to permits for extractive industry.

Clause 29 requires a respondent to an appeal to lodge with the registrar and serve on the appellant a short statement of the grounds on which he intends to rely at the hearing of the appeal. Also makes provision where there is failure to comply with the requirements.

Clause 30: Notice of the time and place of an appeal is to be given to the appellant and every other person served with a copy of the appeal. Notice is to be given in writing unless the chief chairman otherwise directs.

Clause 31 provides for additional notice to be given of certain appeals under the *Town and Country Planning Act 1961* and makes provision in certain cases where the appeal relates to the responsible authority's failure to determine an application.

Clause 32: In relation to an appeal under the *Town and Country Planning Act 1961* a division with the consent of the chief chairman may in certain circumstances declare that a permit has been issued by the responsible authority.

Clause 33 enables the chief chairman to declare a municipality to be a party to an appeal where any doubt arises or dispute occurs.

Clause 34: An appellant may withdraw an appeal by notice in writing.

Clause 35: The Board may strike out an appeal if it is satisfied that the appeal is frivolous or vexatious, or that there has been inordinate and inexcusable delay by the appellant in advancing the appeal towards a hearing.

Clause 36: The Board may amend a notice of appeal.

Clause 37: On the hearing of an appeal the parties are not restricted to grounds previously notified, but the Board shall ensure that other parties to the appeal have a reasonable opportunity of properly considering and replying to any new ground or matter.

Clause 38 sets down the power of the Board where there is a submission of invalidity in relation to certain matters.

Clause 39: The division hearing an appeal may with the consent of the chief chairman amend an application for a permit as it thinks fit and on such terms as to the giving of notice of the amended application as the division with the consent of the chief chairman thinks just.

Clause 40 enables the Board to adjourn the hearing of an appeal.

Clause 41 sets down the matters which the Board may take into account in determining an appeal.

Clause 42 gives the members, registrar and staff of the Board entry and inspection rights. A penalty for obstruction or refusal of admission is prescribed.

Clause 43 contains special provisions in relation to civil causes of action where the Board is exercising jurisdiction conferred on it by Part I of the *Drainage of Land Act 1975*. A penalty is prescribed for failure or refusal to obey an order made by the Board pursuant to these provisions. An order made by the Board may be made a rule of the Supreme Court.

Clause 44: Determinations of the Board are to be in writing and signed by the member or members who constituted the division that made the determination. Provision is made where a member is unavailable to sign the determination.

Clause 45: The Board is to give reasons for determinations either orally or in writing.

Clause 46 enables the Board to correct a determination where there has been a mistake or error or an evident material miscalculation or mistake in description.

Clause 47: A determination made by the Board shall be final and there shall be no appeal other than an appeal to the Supreme Court on a question of law.

Clause 48 provides for the Board on its own motion or on the application of any party to refer a question of law to the Supreme Court. Any party may appeal to the Supreme Court against a determination on a question of law. An appeal to the Supreme Court shall not operate as a stay of proceedings unless the Supreme Court otherwise orders.

Clause 49 provides for determination of appeals where all parties inform the registrar that they do not desire to be heard or to make any submissions in writing with respect to that appeal.

Clause 50 makes provision in relation to appeals which raise major issues of policy. Where it appears to the Board that an appeal raises such an issue, the Board shall, unless otherwise directed by the Minister for Planning, hear or continue to hear the appeal but shall not make a determination thereon.

Where it appears to the Minister for Planning that an appeal pursuant to the *Town and Country Planning Act 1961* raises such an issue, he may direct the Board to hear or continue to hear the appeal but not to make a determination thereon.

Where it appears to the Minister administering the Act under which any other appeal is brought, that the appeal raises such an issue he may request the Minister for Planning to similarly direct the Board and the Minister for Planning shall comply with that request.

As soon as practicable after the completion of the hearing, the Board shall advise the Minister for Planning of its opinion thereon. In the case of an appeal pursuant to the *Town and Country Planning Act 1961*, the Minister for Planning shall within 30 days of receiving the advice refer the appeal to the Governor in Council for determination. In the case of an appeal under any other Act the Minister for Planning shall refer it to the relevant Minister who within 30 days shall refer the appeal to the Governor in Council for determination. The determination of the Governor in Council shall operate as a determination of the Board.

Clause 51: Empowers the chief chairman on application to enlarge the appointed time or the time fixed by an order under this clause for doing any act or taking any proceeding. An order enlarging the time for lodging an appeal shall not be made if the appeal has already been set down for hearing or the permit or licence has already been issued.

Clause 52 provides that subject to this Act each party to proceedings before the Board shall bear his own costs. The Board may make such orders as to costs as it thinks just in a particular case if in its opinion there are circumstances that justify it doing so.

Clause 53: The Board is to publish from time to time a report or bulletin of important or typical determinations made by it. For the guidance of relevant authorities, the Board is to cause notification to be given as soon as practicable of important determinations made by the Board and in which such authorities are liable to be interested.

DIVISION 3—REFERENCE BY MINISTER

Clause 54: The Board is to advise the Minister on such matters relating to the use or development of land as the Minister refers to the Board.

PART III—COMPULSORY CONFERENCE

Clause 55: The chief chairman may order the parties to an appeal to attend a compulsory conference to be conducted by him or another member of the Board appointed by him. The registrar shall notify the parties accordingly. The clause also makes provision as to when the compulsory conference may be held.

Clause 56 sets down objects of compulsory conferences.

Clause 57 provides for parties to serve on other parties and lodge with the registrar a statement of grounds and such other information as is likely to facilitate the achievement of the objects of the compulsory conference.

Clause 58 makes the provisions of clauses 14, 15, 16 and 17 applicable to compulsory conferences.

Clause 59 enables the member conducting a compulsory conference to adjourn that conference.

Clause 60 enables the member conducting the compulsory conference to determine the appeal if the parties attending the conference are agreeable or to strike out the appeal. Also provides that persons other than qualified legal practitioners representing parties to an appeal must be authorized in writing by the party represented where they agree to the member conducting the conference disposing of the appeal.

Clause 61: Where on the hearing of an appeal a party raises a question of law or of fact not raised by him at the compulsory conference, he may be ordered to pay costs arising to other parties by reason of the failure to raise that question at the compulsory conference.

Clause 62: Where the appeal is not resolved at the compulsory conference, a report on the matters in dispute and the questions of law and fact relating to that appeal is to be made by the member conducting the compulsory conference. A copy of the report is to be made available to the parties.

PART IV—MISCELLANEOUS

Clause 63 requires the chief chairman to advise the Minister on certain matters.

Clause 64 requires the chief chairman to submit an annual report to the Minister by 30 September and for the Minister to cause the report to be laid before Parliament.

Clause 65 enables the chief chairman with the consent of the Minister to delegate his powers and functions.

Clause 66 lists certain offences and provides for a penalty.

Clause 67 makes provision where the person charged with an offence against this Act is a body corporate.

Clause 68 provides for immunity from suit for any member of the Board or any other person on account of any proceeding taken any publication made or anything done under the authority of this Act.

Clause 69 makes provision in relation to the giving of documents.

Clause 70 provides for judicial notice of the official signature of the chief chairman, members and registrar of the Board.

Clause 71 is a saving clause in relation to the rights of officers of the Public Service who may be appointed members of the Board. It also provides for saving of superannuation rights.

Clause 72 gives power to make regulations.

