



ANALYSIS

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1971, No. 153

An Act to amend the Town and Country Planning Act 1953
[17 December 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 (No. 2) 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—Subsection (1) of section 2 of the principal Act is hereby amended—

(a) By adding to the definition of the term “change” (as inserted by section 2 (1) (c) of the Town and Country Planning Amendment Act 1966) the words “or any alteration made or to be made to any review after it has been publicly notified pursuant to subsection (2) of section 30A of this Act”:

- (b) By inserting, after the definition of the term “Minister”, the following definitions:
- “‘Objection’ includes any notice of support of, or opposition to, any objection under section 23 or section 24 of this Act:
- “‘Objector’ includes the Minister and any person who has given notice of support of, or opposition to, any objection under section 23 or section 24 of this Act:”:
- (c) By adding to the definition of the term “public work” (as amended by section 2 (c) of the Town and Country Planning Amendment Act 1968) the words “and national park purposes under the National Parks Act 1952”:
- (d) By inserting in the definition of the term “variation” (as added by section 2 (1) (o) of the Town and Country Planning Amendment Act 1966), after the word “operative”, the words “or made or to be made to any review, of the operative district scheme, that has been publicly notified pursuant to subsection (2) of section 30A of this Act”.

3. Contents of district schemes—(1) Section 21 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Any district scheme may provide for the circumstances under which, the manner in which, and the conditions subject to which, the Council may grant an application for the dispensation wholly or partly from or waiver of any provision of the district scheme relating to—

- “(a) The subdivision of land zoned for any urban purpose;
- “(b) The height, bulk, density, and location of buildings permitted on sites;
- “(c) The provision of parking and loading spaces;
- “(d) The design of buildings, verandahs, and signs; and
- “(e) Such other matters as may be specified in that behalf by any regulations for the time being in force under this Act—

if, as a minimum requirement, the Council is satisfied that—

- “(f) It is not reasonable or practicable to enforce the provision in respect of a particular site;
- “(g) The dispensation or waiver will not detract from the amenities of the neighbourhood and will have little

town and country planning significance beyond the immediate vicinity of the land in respect of which the dispensation or waiver is sought; and

“(h) The written consent has been obtained of every person the interests of whom in the Council’s opinion might be prejudiced by granting the dispensation or waiver, unless in the Council’s opinion it is unreasonable in the circumstances existing to require such consent to be obtained.”

(2) The said section 21 is hereby further amended by omitting from subsection (2) the words “description of the particular purposes of the scheme”, and substituting the words “statement of the policy and particular objectives and purposes of the scheme, a statement of the means by which and the times within which the policy, and the objectives and purposes, will be implemented and achieved,”.

(3) Subsection (5) of the said section 21 is hereby further amended—

(a) By adding to paragraph (b) (as amended by section 6 (1) of the Town and Country Planning Amendment Act 1961) the word “; and”:

(b) By adding the following paragraph:

“(c) A copy shall be supplied by the Council to the Regional Planning Authority (if any).”

(4) The said section 21 is hereby further amended by omitting from subsection (6) the words “having jurisdiction within the district”.

(5) The said section 21 is hereby further amended by omitting from subsection (7) (as added by section 13 (3) of the Town and Country Planning Amendment Act 1957) the words “having jurisdiction within the district”.

(6) Every dispensation and waiver granted, before the 10th day of November 1971, by any Council pursuant to any provision in the ordinances forming part of its district scheme is hereby validated and shall be deemed to have been lawfully and properly granted:

Provided that nothing in this section shall apply in respect of the order or judgment of any Court made or given before the said date or in respect of any proceedings commenced in any Court before that date.

4. Variation of proposed district scheme—(1) Section 22A of the principal Act (as inserted by section 17 of the Town

and Country Planning Amendment Act 1966) is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) If at any time after the public notification of the proposed district scheme and before the last date for receiving objections thereto, the Council wishes to vary the scheme, it may lodge an objection to the scheme under section 24 of this Act, and the provisions of this Act and of the regulations for the time being in force under this Act relating to objections and appeals shall apply accordingly.

“(1A) If at any time after the last date for receiving objections to a proposed district scheme, the Council wishes to vary the proposed scheme for any reason (other than to give effect to a decision of the Board or to meet objections that have been heard by the Council or a committee of the Council in accordance with section 25 of this Act), the Council shall publicly notify the nature of the variation and the place or places at which the scheme and full particulars of the variation have been deposited for inspection.”

(2) The said section 22A (as so inserted) is hereby further amended by inserting in subsection (2), after the words “public notification”, the words “of the variation”.

(3) Every variation of a district scheme purporting to have been made by the Council at any time before the passing of this section during the period and in the manner set out in subsection (1) of section 22A of the principal Act (as substituted by subsection (1) of this section) is hereby validated and shall be deemed to have been lawfully and properly made; and all hearings and decisions of the Council and of the Board in respect of any such variation are hereby validated and shall be deemed to have been lawfully and properly held and made:

Provided that nothing in this section shall affect the rights of any party under any decision of the Board given before the passing of this Act, or under any judgment of any Court given before the passing of this Act or given after the passing of this Act if the proceedings in that Court had been commenced before the passing of this Act:

Provided also that where in the opinion of the Board, on application made to it within a period of 6 months after the passing of this Act, the validation of any variation under this section has resulted in any injustice to the applicant, the Board may grant such relief to the applicant as it thinks

appropriate to remove the injustice; and in particular, without limiting the generality of the Board's powers, the Board may hear or rehear and decide any appeal or application.

5. Objections by Minister and local authorities, etc.— Subsection (1) of section 24 of the principal Act is hereby amended—

- (a) By inserting, before the words “and every local authority”, the words “the Council,”;
- (b) By omitting the word “property”, and substituting the word “land”.

6. Changes to or cancellation of operative district scheme— Section 29 of the principal Act (as substituted by section 26 of the Town and Country Planning Amendment Act 1966) is hereby amended by repealing subsection (2).

7. District schemes to be reviewed every 5 years—Section 30 of the principal Act (as substituted by section 27 (1) of the Town and Country Planning Amendment Act 1966) is hereby amended by adding the following subsections:

“(6) The Council shall—

“(a) Within 6 months after the date of the commencement of this subsection in any case where any district scheme—

“(i) Has become due for review on or before that date and the review has not by that date been recommended by resolution of the Council in accordance with paragraph (a) of subsection (4) of section 30A of this Act; or

“(ii) Will become due for review within 12 months after that date; or

“(b) Not later than 1 year before any district scheme becomes due for review, in any other case—

prepare and send to the Minister, to the District Commissioner of Works for the area to which the scheme relates, to the Regional Planning Authority (if any), to every local authority having jurisdiction within the district, and to the Council for every adjoining district which has any community of interest with the Council responsible for the scheme that is to be reviewed in respect of any of the matters referred to in the Second Schedule to this Act, a statement setting out the planning objectives of the Council responsible for the scheme

to be incorporated in the review of the scheme and the policy to be pursued to achieve those objectives, accompanied by such plans as may be necessary or desirable to illustrate those objectives and that policy.

“(7) Every such statement sent to the Minister, or to a local authority having jurisdiction within the district, or to the Council for an adjoining district, shall be accompanied by a request for advice as to the public works proposed by the Minister, the local authority, or the Council for the adjoining district, as the case may be, for inclusion in the review of the district scheme, and shall specify a date, being not less than 4 months nor more than 6 months after the date of making that request, within which the advice shall be sent to the Council.

“(8) After the receipt of any such advice or the expiration of the specified period (whichever is the earlier), the Council shall approach the Regional Planning Authority (if any) and the District Commissioner of Works, and every local authority or Council to which a statement and request for advice has been sent, and which has indicated to the Council that it desires to be consulted, with a view to holding discussions as soon as practicable to ensure that all aspects of planning are considered in relation to the objectives of the Council responsible for the scheme that are to be implemented in the review, and that adequate provision is made for and co-ordination affected of existing and proposed public works in the review of the scheme.”

8. Procedure in respect of changes and reviews of operative district schemes—(1) Section 30A of the principal Act (as substituted by section 28 (1) of the Town and Country Planning Amendment Act 1966) is hereby amended by omitting from subsection (3) the words “having jurisdiction within the district”.

(2) The said section 30A is hereby further amended by omitting from paragraph (b) of subsection (4) the words “six weeks”, and substituting the words “3 months”.

(3) The said section 30A is hereby further amended by omitting from paragraph (d) of subsection (4) the words “having jurisdiction within the district”.

(4) The said section 30A is hereby further amended by omitting from the proviso to paragraph (d) of subsection (4) the words “six months”, and substituting the words “3 months”.

9. Works contrary to proposed change prohibited—(1) The principal Act is hereby further amended by repealing section 30B (as inserted by section 12 of the Town and Country Planning Amendment Act 1961), and substituting the following section:

“30B. (1) As from the time when any proposed change in an operative district scheme is publicly notified in accordance with subparagraph (ii) of paragraph (a) of subsection (4) of section 30A of this Act, no person shall, without the consent of the Council, or of the Board on any appeal, construct any structure or make any excavation or carry out any other work or any subdivision of land, or make any change of use of any land or building, that would be contrary to the provisions of the operative district scheme had the proposed change become operative and been included therein at the time of the public notification.

“(2) Every application for the Council’s consent under this section shall be made in accordance with regulations for the time being in force under this Act as if the application were an application for consent to a specified departure.

“(3) The Council may consent to any such application only—

“(a) If the effect of the structure or excavation or other work, or of the subdivision of land, or of the change of use, will not be contrary to the public interest and will have little town and country planning significance beyond the immediate vicinity of the land or building in respect of which the consent is sought, and if the effect of the proposed change will not be nullified thereby; or

“(b) If the structure or excavation or other work, or the subdivision of land, or the change of use, is in accordance with an objection made to the proposed change, and—

“(i) The objection has been allowed by the Council and the time for lodging appeals against the Council’s decision has expired without any appeal having been lodged; or

“(ii) The objection has been allowed by the Board on appeal.

“(4) The Minister and every Regional Planning Authority and local authority having jurisdiction in or adjacent to the area to which the application relates, and every person who

or body that claims to be affected by the application, if it is granted, shall have the right to object to the Council against the application being granted and to be heard by the Council when it considers the application.

“(5) Subject to the provisions of subsection (3) of this section, the Council may, after the application and all objections have been considered, grant or refuse the application; and in granting any application may impose such conditions, restrictions, and prohibitions in respect thereof as it thinks fit.

“(6) The applicant and the Minister, and every person, authority, or body who or which objected to the Council against the application for consent may, within 21 days after the date on which the Council consents to or refuses to consent to the application, appeal to the Board against that decision.

“(7) In determining any appeal under this section, the Board shall observe the principles set out in subsection (3) of this section; but the Board may allow an appeal by the applicant for consent if, for reasons to be specified by the Board, it considers that some dispensation from those principles is warranted in the public interest.

“(8) Every consent granted under this section or any former corresponding section shall lapse on the expiry of a period of 2 years after the date on which it was granted or on the expiry of a period of 2 years after the date of the commencement of this section, whichever is the later, unless—

“(a) The person to whom it was granted or his successor in title has, within the appropriate 2-year period, constructed the structure or made the excavation or carried out the other work or the subdivision or established the use of the building or land concerned for the purpose in respect of which consent was granted; or

“(b) In the Council’s opinion he is continuing to make substantial progress towards constructing the structure or making the excavation or carrying out the other work or the subdivision or establishing that use.

“(9) If at any time the use of any land or building which has been established pursuant to a consent granted under this section is discontinued for a period of 6 months, the consent shall lapse unless the Council, within 12 months after the use being first discontinued, consents to the period of 6 months being extended to a period to coincide with the period during which the use was discontinued.

“(10) Sections 30 and 33 of this Act shall be read subject to the provisions of this section.

“(11) Nothing in this section shall apply in respect of an existing use, within the meaning of section 36 of this Act, of any land or building.

“(12) Subject to subsection (11) of this section, every person commits an offence against this Act who acts in contravention of subsection (1) of this section.”

(2) The following enactments are hereby consequentially repealed:

(a) Section 12 of the Town and Country Planning Amendment Act 1961:

(b) Section 29 of the Town and Country Planning Amendment Act 1966:

(c) Section 11 of the Town and Country Planning Amendment Act 1968.

10. Departure from district scheme—(1) The principal Act is hereby further amended by repealing section 35 (as substituted by section 35 (1) of the Town and Country Planning Amendment Act 1966), and substituting the following section:

“35. (1) Notwithstanding the provisions of section 33 of this Act, the Minister, or any local authority, or the owner or occupier of the land concerned, may apply to the Council in accordance with this section and with regulations made under this Act to grant an exception to any provision of an operative district scheme or a proposed district scheme by consenting to a specified departure.

“(2) The Council may consent to such a specified departure only if—

“(a) The effect of the departure will not be contrary to the public interest and will have little town and country planning significance beyond the immediate vicinity of the land concerned, and the provisions of the scheme can remain without change or variation; or

“(b) The departure is in accord with the effect of a resolution which the Council has passed initiating a change or variation in the scheme, but which is of such urgency as to warrant its immediate authorisation in the public interest without waiting the time involved in completing the change or variation; or

“(c) The departure is—

“(i) In accord with a change or variation in the scheme in respect of which the time for lodging objections has expired and against which no objection has been lodged; or

“(ii) In accord with an objection made to a change or variation in the scheme, which objection has been allowed, and the time for lodging appeals against the allowance has expired without any such appeal having been lodged.

“(3) The Minister and every Regional Planning Authority and local authority having jurisdiction in or adjacent to the district to which the application for consent to the departure relates, and every person who or body that claims to be affected by the application, shall have the right to object to the Council against the application being granted and to be heard by the Council when it considers the application.

“(4) Subject to the provisions of subsection (2) of this section, the Council may, after the application and all objections have been considered, consent to or refuse the application; and in consenting to the application may impose such conditions, restrictions, and prohibitions as it thinks fit.

“(5) The applicant and the Minister and every person, authority, or body who or that objected to the Council against the application for consent to the specified departure may, within 21 days after the date on which the Council consents to or refuses to grant the departure, appeal to the Board against that decision.

“(6) In determining any appeal under this section, the Board shall observe the principles set out in subsection (2) of this section; but the Board may allow an appeal by the applicant for consent if, for reasons to be specified by the Board, a departure from those principles is found by the Board to be warranted in the public interest in the particular circumstances of the case.

“(7) Every consent granted under this section or any former corresponding section shall lapse on the expiry of a period of 2 years after the date on which it was granted or on the expiry of a period of 2 years after the date of the commencement of this section, whichever is the later, unless—

“(a) The person to whom it was granted or his successor in title has, within the appropriate 2-year period, given effect to the consent; or

“(b) In the Council’s opinion he is continuing to make substantial progress towards giving effect to the consent.

“(8) If at any time the use of any land or building which has been established pursuant to a consent granted under this section is discontinued for a period of 6 months, the consent shall lapse unless the Council, within 12 months after the use being first discontinued, consents to the period of 6 months being extended to a period to coincide with the period during which the use was discontinued.”

(2) Section 35 of the Town and Country Planning Amendment Act 1966 is hereby consequentially repealed.

11. Offences and penalties in respect of failure to comply with district scheme—(1) The principal Act is hereby further amended by repealing section 36, and substituting the following section:

“36. (1) Every person commits an offence against this Act who, after a district scheme becomes operative,—

“(a) Uses any land or building in a manner not in conformity with the scheme as in force for the time being; or

“(b) Constructs any building that is not in conformity with the scheme as in force for the time being,—

unless that use is an existing use within the meaning of this section or, as the case may be, that use or the construction of that building is authorised pursuant to a consent given and subsisting under section 35 of this Act.

“(2) The Council in whose district the offence has been committed may in respect of a continuing offence, whether or not a conviction has been entered in respect thereof, apply to the Supreme Court, or, where the capital value as appearing in the district valuation roll of the property concerned does not exceed \$20,000, to a Magistrate’s Court, for an injunction to restrain the continuance of the offence.

“(3) For the purposes of this section the term ‘existing use within the meaning of this section’, in relation to any land or building, means—

“(a) In the case of any land or building that has been used before the date on which the district scheme or the relevant provisions thereof became operative, a use of that land or building for any purpose that does not require substantial reconstruction

or alteration or addition thereto and that is of the same or a similar character as that for which it was last used before the date on which the district scheme or the relevant provision thereof became operative:

“(b) In the case of a new building, whether proposed, partly erected, or erected, which has not been used before the date on which the district scheme or the relevant provision thereof became operative, a use for any purpose for which approval for its erection was given by the Council; but any use of such new building which commenced after the expiry of a period of—

“(i) Two years after the date on which the Council consented to the erection of the building; or

“(ii) Two years after the date of the commencement of this section—

whichever is the later, shall not be deemed to be an existing use within the meaning of this section, unless the Council certifies that substantial progress has been made within the 2-year period towards the erection or completion of the erection of the building.

“(4) Notwithstanding the provisions of subsection (3) of this section, if at any time after the date on which the district scheme or the relevant provision thereof became operative the existing use within the meaning of this section of any land or building is discontinued for a period of 6 months, no use of that land or building shall at any subsequent time be deemed to be an existing use within the meaning of this section, unless the Council, within 12 months after the use first being discontinued, consents to that period of 6 months being extended to a period to coincide with the period during which the use was discontinued.”

(2) The following enactments are hereby consequentially repealed:

(a) Section 24 of the Town and Country Planning Amendment Act 1957:

(b) Section 37 of the Town and Country Planning Amendment Act 1966.