Use of Conditions Attached to Planning Consents for Non-Predominant Uses

by

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I. Introduction

Aristotle observed: "Law is always a general statement, yet there are cases which it is not possible to cover in a general statement. . .The error is not in the law or the lawmaker, but in the nature of the case: the material of conduct is essentially irregular".[1] Such a tension is especially acute in the area of town and country planning. The common good requires a general rule that groups compatible uses of land in one geographical zone. The individual owner or occupier of a piece of land within that geographical zone may be currently using – or proposing to use – his land for a use incompatible with those permitted by the general rule. This conflict involves not only economic and sociological issues, but also less tangible concepts of proprietary freedom that stretch back to Magna Carta.

The Town and Country Planning Act 1977 pragmatically eases the tension. The council responsible for the district scheme may include any type of land use within either of two categories of *general* regulation:

(a) the category of universal permission, in which that type of land use is a *predominant* use that may be carried on by all land-users in the planning area, in accordance with broad guidelines; or

(b) the category of prohibition, in which that type of land use may not be carried on in the planning area.

The council has in addition, a power of *specific* regulation, whereby a type of land use that is otherwise prohibited by general regulations, may be permitted in an individual case. The type of use becomes an exceptional, or *non-predominant* use in the planning area. In effect, the power of specific regulation introduces an option between either category of general regulation: the type of use is generally prohibited, but is permitted in an individual case, although that permission is not a universal permission, but is limited by restrictions, called conditions.

[1] *Nicomachean Ethics* V, x, 4.

Conditions are an important part of the council's consent to a non-predominant use. They suppress those aspects of the non-predominant use that are significantly out of character with the surrounding predominant uses, to enable the non-predominant use to blend with the vicinity as unobtrusively as possible. Such conditions can be very detailed and restrictive: in *Wagener Ltd* v. *Mt Albert Borough*[2] the Appeal Board imposed thirteen conditions, covering such matters as the hours when the factory could operate, the provision of fire-fighting equipment and the control of fume emission. But occasionally a non-predominant use may be so incompatible with the zoning that no set of conditions can harmonise it with the predominant uses: in *Kyle* v. *Waitemata County*[3] the Board disallowed a conditional use that the Council had allowed subject to stringent conditions.

II The Power To Impose Conditions

The Town and Country Planning Act 1977 empowers the council to impose conditions by the following provisions: sections 31, 32 (in relation to detrimental works), 33 (in relation to the control of land for certain purposes), 36(4)(a), (b) (in relation to the contents of district schemes), 67 (a general power to impose conditions on a consent granted after an application e.g. an application by section 72 (conditional use) or section 74 (specified departure)), 71 (power of council to vary existing conditions or impose new conditions as the result of changed circumstances), and section 121 (in relation to designated land). Sections 36(4)(a) and 121 cover conditions incorporated into the power of general regulation. Sections 31, 32, 33, 36(4)(b), 67 and 71 cover conditions that are attached to planning consents for non-predominant uses, and are within the scope of specific regulation.

The path of appeal lies from the council to the Planning Tribunal. The Tribunal has power to impose conditions on its own initiative during an appeal hearing: (section 150(3) of the 1977 Act). Section 150(1) emphasises that the Tribunal has the duplicate powers of the body being appealed against. These two subsections give the Tribunal power to:

(a) let the council's conditions stand;
(b) excise the council's conditions and impose such conditions as ". . .the Tribunal thinks just"[4]; or
(c) excise the conditions and impose none of its own.

The wording of the Act confers a broad discretion upon both the councils and the Tribunal. The limits of the discretion and the ambit within which it may operate remain to be defined by the common law. In

[2] (1959) 1 N.Z.T.C.P.A. 104.
[3] (1969) 2 N.Z.T.C.P.A. 214.
[4] s.150(3).

this area it may be said that the changes are ". . .more apparent than real".[5] The functions of the council under the 1977 Act remain substantially the same. The Planning Tribunal appears to comprise the former Appeal Boards sub alio nomine (section 164), although there have been structural changes in the Tribunal's composition. Innovations by either body are unlikely, so case law on the use of conditions prior to the 1977 Act will probably retain its authority.

The leading case in the Commonwealth is *Fawcett Properties Ltd* v. *Buckingham County Council.*[6] The town-planning authority – the local Council – had granted permission to develop a piece of land by building a pair of cottages upon it. The permission was subject to a condition as to the type of person who could occupy the cottages. In analysing the attachment of conditions to planning consents the House of Lords held: (i) the condition must be certain (but a condition had to be very vague or ambiguous before it became "uncertain"); (ii) the condition must fairly and reasonably relate to the permission to which it is attached; or, in the words of Lord Jenkins: "Accordingly the power must be construed as limited to the imposition of conditions with respect to matters relevant, or reasonably capable of being regarded as relevant, to the implementation of planning policy";[7] and (iii) the condition must not be ultra vires the powers of the council.

These statements may be safely accepted as an accurate summary of the law in New Zealand. The Court of Appeal in *Turner* v. *Allison*[8] added a gloss to the law in *Fawcett Properties* in holding that an improper condition – or part of a condition – may be severed from the town-planning consent if this condition is not essential or integral to the consent.

These criteria for the imposition of conditions are, in actual fact, similar to the standards by which the Appeal Board operated. A number of examples will illustrate how the Board applied these criteria.

(i) Certainty

In *Titirangi Ratepayers' and Residents' Association Inc.* v. *Waitemata County*[9] the Council had consented to a change of use, to allow the Amalgamated Brick and Pipe Co. Ltd to extract clay from a block of land zoned "urban". The Council had attached conditions controlling the dust problem, but the Appeal Board dismissed these as being "too vague"[10] and imposed more stringent conditions.

[5] Robinson "The Town and Country Planning Act 1977" [1978] N.Z.L.J. 73, 75.
[6] [1961] A.C. 636 (H.L.).
[7] *Ibid.*, 684, quoted in *Onehunga Timber Holdings* v. *Rotorua City Council* (1971) 4 N.Z.T.P.A. 38, 40.
[8] (1971) 4 N.Z.T.C.P.A. 104.
[9] (1960) 1 N.Z.T.C.P.A. 109.
[10] *Ibid.*, 110.

In *Halligan* v. *Papateotoe Borough*[11] the Board agreed with the appellants' submission that "the condition imposed by the Council does not define with sufficient accuracy the nature, position and area of the proposed service lane". The Board deleted the vague condition and substituted a precise one detailing the width and site of the service lane.

(ii) Relevance

In *Ascot Farms Ltd* v. *Manukau County Council*[12] the Board considered the propriety of imposing upon a landowner, as a condition attached to a "conditional use" consent, the obligation to tar-seal a neighbouring dedicated road. The Board thought that "this would not appear to be justified". Although the Board was not explicit, the apparent reason was that such a condition would not be relevant to the conditional use, which was the erection of an office block.

In *G. and S. Coal and Transport Company Ltd* v. *Feilding Borough Council*[13] the Council had required the erection of walls on two boundaries of the appellant's property, as a condition of a specified departure. The Appeal Board could find no evidence of the necessity or desirability of such a wall on the western boundary and so deleted that part of the condition – the western wall was not *relevant* to the consent.

A good example of an irrelevant condition occurs in *Smallbone Bros Ltd* v. *Ashburton Borough.*[14] The Council had imposed a condition attached to a conditional use that the appellant's service station sell several brands of products. The Board deleted this condition as being irrelevant to a planning consent. In this case the Board applied its own statement in *Re Reids Application*[15] that "The Board does not regard this question as strictly one of town planning and consequently imposes no such formal condition".

An appeal heard by the Board under the Municipal Corporations Act 1954, concerned the Council's demand for a sum of money. The Board excised the Council's demand in this case (*Bell T.V.-Radio Corporation* v. *Mt Eden Borough*)[16] because ". . .prima facie it [the Council] does not need any cash payment from the appellant to assist towards the acquisition of land elsewhere than in the appellant's sub-division".[17] Clearly the Council had sought the cash payment not for the purposes set out in the Municipal Corporations Act, but to swell the Council's general funds. This purpose was irrelevant to the statute.

[11] (1962) 2 N.Z.T.C.P.A. 4.
[12] (1964) 2 N.Z.T.C.P.A. 175.
[13] (1966) 3 N.Z.T.C.P.A. 17.
[14] (1969) 3 N.Z.T.C.P.A. 196.
[15] (1969) 3 N.Z.T.C.P.A. 43.
[16] (1972) 4 N.Z.T.P.A. 363.
[17] *Ibid.*, 366.

(iii) Intra vires

The question of ultra vires arose in *Pap* v. *Onehunga Borough Council.*[18] The appellant submitted that the Council's condition under the Town and Country Planning Act that a building be demolished, was ultra vires, because that condition was not included for the purposes of town planning, but as a fire prevention method. The Board held that a condition imposed solely for a reason not related to town-planning would be ultra vires the Council acting under the Act, and thus void.

In *Bycroft* v. *Taumaranui County Council*[19] the Council had approved a change of use, subject to two conditions requiring a total payment of $842.80 to two of the Council's Funds. In a brief decision the Board held that "...the respondent has gone beyond its powers in imposing conditions requiring cash payments by the appellant to certain funds created by the respondent".[20] The ultra vires conditions were deleted by the Board.

(iv) In addition to the above criteria the Board has adopted a fourth criterion: that of "reasonableness".

In *D.M. Black Ltd* v. *Stratford Borough*[21] the appellant and respondent were directed by the Board to agree upon the conditions to be attached to a conditional use. The Board explicitly allowed either party to apply to the Board for directions as to the *reasonableness* of a proposed condition. This statement clearly indicates the Board's regard for reasonable conditions.

In *G. and S. Coal and Transport Company Ltd* v. *Feilding Borough Council*[22] the Board considered the reasonableness of the respondent's conditions as to the erection of walls and washing of crates. Although it considered that the conditions were in general reasonable, the Board did alter the conditions to remove the element of unreasonableness.

The unreasonable condition in *Smith* v. *Waimiri County*[23] was a requirement that 300 houses had to have been built, or be in the process of being built, in a particular sub-division before the appellant could erect shops in that area. It was "unreasonable" the Board held, "...to impose conditions which have the effect of preventing the new development from having any shops serving it until at least 300 houses have been or are being built".[24] This condition, attached to a consent to a change of use, was deleted.

In a case concerning the provisions of the Municipal Corporations Act

[18] (1972) 4 N.Z.T.P.A. 349.
[19] (1976) 6 N.Z.T.P.A. 73.
[20] *Ibid.*, 74.
[21] (1960) 1 N.Z.T.C.P.A. 115.
[22] (1966) 3 N.Z.T.C.P.A. 17.
[23] (1970) 3 N.Z.T.C.P.A. 314.
[24] *Idem.*

1954, *King Country Finance Ltd* v. *Taumaranui Borough*[25] Woodhouse J. explained that "reasonableness" is to be evaluated as an issue of fact by reference to the circumstances as they apply to a particular case. This understanding of "reasonableness", applied to a statute similar to the Town and Country Planning Act, is most appropriate for town-planning conditions. It is the type of pragmatic test that the Board customarily applied to appeals.

But in appeals heard under the Water and Soil Conservation Act 1967, the Board has adopted a different standard of "reasonableness". In *Ballantyne and Co. Ltd* v. *North Canterbury Catchment Board*[26] the respondent Board had granted a water right subject to the condition that it would cancel the right at any time if it was deemed to be in the public interest to do so. The Board held that this condition was reasonable in the circumstances, namely, the risk of contamination spreading rapidly in underground wells if the appellant's own well (the subject of the water right) became polluted. The condition was upheld despite its extensive application. The case indicates that the Board permitted more stringent conditions under the Water and Soil Conservation Act 1967, than under the Town and Country Planning Act 1953.

The Board gave some direction on how to arrive at reasonable conditions. In *Abbot* v. *Matamata County*[27] the Board recommended that a council should always invite the applicant to the meeting where his application is heard and conditions imposed. In this way the applicant can make submissions directly on the circumstances and reasonable conditions. The Board hinted that it was even better if the applicant submitted in advance the conditions to which he would agree.

III. Types Of Conditions

As stated earlier, the purpose of conditions is to adapt the non-predominant use as much as possible to the predominant uses. Conditions may be divided into two main classes:
(i) construction conditions
(ii) usage conditions.

(i) Construction conditions

Local councils and the Board have imposed a wide variety of conditions on the construction of buildings. Such conditions have regulated:-

(a) the type of materials to be used;[28]

[25] (1971) 4 N.Z.T.P.A. 252.
[26] (1971) 4 N.Z.T.P.A. 134.
[27] (1970) 3 N.Z.T.C.P.A. 281.
[28] *MacDonald* v. *Dunedin City* (1972) 4 NZTPA. 305; and *Moore* v. *Tauranga City Council* (1966) 3 N.Z.T.C.P.A. 25.

(b) the removal of paving already laid;[29]
(c) the distance of the structure from the boundary;[30]
(d) the number of parking spaces;[31]
(e) the paving of open spaces;[32]
(f) the planting of trees and hedges;[33]
(g) the erection of a special air-conditioned room for a mincer unit and adequately fly-proofed premises;[34]
(h) the number of road entrances;[35]
(i) erection of advertising;[36]
(j) the type of boiler furnace and fuel to be used;[37]
(k) the type of lighting to be used;[38]
(l) the installation of music systems;[39]

Conditions as to construction may also carry a time limit. In *Spence* v. *Heathcote County*[40] the appellant was obliged to pave certain areas of his land within three years. In *Wagener Ltd* v. *Mt Albert Borough*[41] the condition imposed required landscaping of the appellant's property. This landscaping was to be completed within three years from the date of the first occupation of any part of the building on the property. In *Manson* v. *Tauranga City Council*[42] the appellant was obliged to erect all buildings within eighteen months of the date of the hearing.

There is occasionally a blanket condition attached to construction that the council's building by-laws be followed: *Industrial Metals Ltd* v. *Heathcote County Council*;[43] *Moore* v. *Tauranga City Council.*[44]

(ii) Usage conditions

Conditions of use normally operate to restrict the type of activities carried on, and/or the time when those activities may be carried on.

(a) Type of Activities

In *R. and W. Hellaby* v. *Mt Wellington Borough*[45] the appellant was prohibited from loading or unloading trucks through a wall adjoining a road boundary.

[29] *Denhard Bakeries Ltd* v. *Wellington City Council* (1964) 2 N.Z.T.C.P.A. 135.
[30] *Minister of Works* v. *Bay of Island County* (1960) 1 N.Z.T.C.P.A. 131.
[31] *Hewitt* v. *Takapuna Borough (1959)* 1 N.Z.T.C.P.A. 85.
[32] *Highway Motors Ltd* v. *Mt Wellington B.C.* (1972) 4 N.Z.T.P.A. 220.
[33] *Norris Avenue Hall Trust Board* v Tauranga City Council (1971) 4 N.Z.T.P.A. 141.
[34] *Vytals Products Ltd* v. *Onehunga Borough* (1957) 1 N.Z.T.C.P.A. 46.
[35] *Minister of Works* v. *Taupo County Commissioner* (1959) 1 N.Z.T.C.P.A. 74.
[36] *Christchurch Regional Planning Authority* v. *Waimairi County Council* (1971) 4 N.Z.T.P.A. 131.
[37] *Re C. Little and Sons Ltd Application* (1964) 2 N.Z.T.C.P.A. 176.
[38] *Carswell* v. *Invercargill City* (1967) 3 N.Z.T.C.P.A. 74.
[39] *MacDonald* v. *Dunedin City* supra.
[40] (1970) 3 N.Z.T.C.P.A. 278.
[41] (1959) 1 N.Z.T.C.P.A. 104.
[42] (1967) 3 N.Z.T.C.P.A. 40.
[43] (1957) 1 N.Z.T.C.P.A. 42.
[44] Supra.
[45] (1956) 1 N.Z.T.C.P.A. 30.

There was a condition in *Moore* v. *Tauranga City Council*[46] that the site be kept in a tidy condition at all times; specifically, no by-products, raw materials or refuse from the cardboard factory there, were to be stored on the site.

In *Carswell* v. *Invercargill City*[47] the appellant was prohibited from carrying on spray-painting and panelbeating in his service station.

The Board imposed a condition in *Lowe* v. *Auckland City*[48] that the premises built on a site in Kohimarama would not be used for a T.A.B. Agency.

To prevent loud noise disturbing the neighbours, a condition was imposed in *MacDonald* v. *Dunedin City*[49] prohibiting the relaying of music by speakers or "other equipment" to the outside of any building.

(b) Time of Activities

In *Carter* v. *Nelson City*[50] there was a restriction placed on the use of a kiln. It could not be operated for more than thirty hours per month.

In *Porirua Licensing Trust* v. *Hutt County*[51] the Board imposed conditions on the times that a liquor store could be open. The Board reserved to itself the right to alter the times of opening. This tight restriction was imposed to provide the residents in the vicinity with "a substantial measure of protection".[52]

The applicant in *Re Reid's Application*[53] was obliged under a planning condition, to provide a 24-hour service, seven days a week, in the service station which was to be established on the Great South Road. This condition was in accord with the necessity of having a 24-hour service station on State Highway 1; since the establishment of the station was undesirable in a rural zone, it could only be allowed if it provided a complete service, and thus compensated for its undesirability.

In *Re an Application by the National Trading Company of New Zealand Ltd*[54] the time condition was unusual; a right-of-way beside a supermarket was not to be used by vehicles entering or leaving the supermarket without Council permission – and that permission could not be granted before 2 December 1984.

In *Thames United Football Club* v. *Thames Borough*[55] the Board restricted the use of a football club's rooms to definite hours. These restrictions were clearly imposed to allow the neighbours some sleep after 12 p.m.

[46] Supra.
[47] (1967) 3 N.Z.T.C.P.A. 74.
[48] (1969) 3 N.Z.T.C.P.A. 164.
[49] Supra.
[50] (1976) 6 N.Z.T.P.A. 11.
[51] (1967) 3 N.Z.T.C.P.A. 70.
[52] *Ibid.*, 71.
[53] (1967) 3 N.Z.T.C.P.A. 43.
[54] (1964) 2 N.Z.T.C.P.A. 180.
[55] (1961) 2 N.Z.T.C.P.A. 10.

(iii) Miscellaneous conditions

The Board has imposed conditions in different cases requiring the applicant to:

(a) purchase neighbouring properties, if necessary;[56]
(b) lease the allotments in question for not more than ten years;[57]
(c) drain the land;[58]
(d) demolish buildings currently standing on the land;[59]
(e) paint an existing building which was not the subject of the appeal;[60]
(f) give a neighbour the first right of purchase;[61]
(g) bring two pieces of land into one block with one legal title;[62]
(h) pay a sum to the Council in lieu of providing parking on the site;[63]
(i) obtain a licence under the Clean Air Act 1972.[64]

IV. Onus Of Proof In The Appeal Board Hearing

In *Te Atatu South Businessmen's Association* v. *Waitemata County Council (No. 2)*[65] the Board held: "So far as the appellants R.S. and B.R. Bishop are concerned, the Board considers that to succeed in their appeal, the onus lies upon them of satisfying the Board that the conditions laid down by the respondent Council are not necessary in order to preserve the amenities of the neighbourhood". It is submitted with respect that this interpretation of the Board's function and the appellant's onus (even if valid by the section 42 then in effect) is incorrect. It is submitted further that the decision of MacArthur J. in *Straven Services* v. *Waimairi County*[66] mutatis mutandis, is an accurate assessment of the respective onus of proof upon the Council and appellant before the Appeal Board. His Honour said: "Having carefully considered the whole matter, my conclusion is that there is no legal basis for the view that in the present appeal there was an onus resting upon the plaintiff to satisfy the Appeal Board that the decision of the County Council was wrong."[67] This statement is in line with the understanding of the Appeal Board's function as a body hearing the case de novo. I submit that on appeal there is no presumption that the council's decisions are appropriate; and that the Appeal Board (now the Tribunal) imposes such conditions as it considers just in the circumstances of the case, as those circumstances have been detailed before it.

[56] *Re Mobil Oil (New Zealand) Limited's Application* (1965) 2 N.Z.T.C.P.A. 234.
[57] *Onslow Investments Ltd* v. *Dunedin City Corporation* (1956) 1 N.Z.T.C.P.A. 27.
[58] *Edward H. Pigeon Ltd* v. *Manukau City* (1956) 1 N.Z.T.C.P.A. 27.
[59] *Peninsular Hardward Co. Ltd* v. *Waitemata County* (1960) 1 N.Z.T.C.P.A. 111.
[60] *Geard* v. *Kaitaia Borough* (1960) 1 N.Z.T.C.P.A. 137.
[61] *Seavale Farming Co. Ltd* v. *Kowai County Council* (1964) 2 N.Z.T.C.P.A. 149.
[62] *Rhodes* v. *Waimairi County* (1970) 3 N.Z.T.C.P.A. 302.
[63] *Horrocks* v. *Henderson Borough Council* (1972) 3 N.Z.T.P.A. 394.
[64] *New Zealand Particle Board* v. *Rodney County* (1976) 6 N.Z.T.P.A. 1.
[65] (1964) 2 N.Z.T.P.A. 124.
[66] (1966) N.Z.L.R. 996.
[67] *Ibid.*, 1005.

V. Enforcement Of Conditions

The Act contains a section with criminal provisions – section 172. It covers both acts and omissions, and applies to conditions of both the councils and the Board. The penalties provided by section 173 are substantial, and could become significant for an enduring offence since a fine of $100 a day can be imposed for every day the offence continues. For example, the existence of a building prohibited by a condition would be a continuing offence, so the fine would mount until the condition was revoked, or the building was demolished.

The council has powers by sections 92, 93 and 94 to enforce the district scheme. A landowner acting contrary to a prohibitory condition attached to a conditional use specified departure or designation would be in contravention of the district scheme, and thus open to action by the council (section 93(3)). Sections 92 and 93 provide for injunctions to enforce compliance. This avenue of enforcement of a condition is in addition to the provisions of section 172.

The 1953 Act did not at first contain a penalty section. Until the insertion of the penalty section, (section 50A), into the 1953 Act by the Town and Country Planning Amendment Act 1966, the Appeal Board relied, where necessary, on a deed or bond to enforce conditions. The 1977 Act provides for regulations to cover this practice (section 175(j)), which may hereby revive. The earlier cases provide a precedent for the form of bond. In *Joseph Mahon Ltd* v. *One Tree Hill Borough*[68] the appellant entered into a bond. The bond contained all the conditions imposed by the Council. In *Russell* v. *Manukau City*[69] the appellant entered a bond of $2,000 that he would complete specific conditions within three months.

The Board also used deeds to enforce conditions. In *Edward H. Pigeon Ltd* v. *Manukau County*[70] the appellant and respondent entered into a Deed of Covenant containing the conditions. A Memorandum of Encumbrance was also entered into, presumably to be registered against the Land Transfer title.

In *Simich* v. *Waitemata County*[71] the Board specifically directed the Deed of Covenant to be registered against the title.

This system of deed or bond, while not as common today, is still a useful method of enforcement in addition to the statutory provisions. The advantage of a Memorandum of Encumbrance is that it is an encumbrance under the Land Transfer Act 1952, and may be registered against the title.

The Appeal Board did not police the conditions, since it was not a Court of Record with power to furnish for contempt of Court. The

[68] (1958) 1 N.Z.T.C.P.A. 64.
[69] (1968) 3 N.Z.T.C.P.A. 119.
[70] (1956) 1 N.Z.T.C.P.A. 27.
[71] (1960) 1 N.Z.T.C.P.A. 110.

councils were in charge of policing. The Board pointed this out quite realistically in *Martin* v. *Levin Borough*[72] where it said: "...the Board would consider it futile for the Council to ask for the imposition of conditions which the *Council* is not willing, and able, to police."[73] The 1977 Act establishes the Planning Tribunal as a Court of Record, with power to punish for contempt (section 128). It remains to be seen whether the Tribunal will actively involve itself in the enforcement of conditions, or leave this aspect to the councils.

VI. Standard Of Conditions

In *Turner* v. *Allison*[74] the Court of Appeal held that the Board may appoint a person or corporation to set the standard for the fulfilment of a condition. This decision approved a practice that had been current in Appeal Board decisions for many years. For example, in *Carswell* v. *Invercargill City*[75] the City Engineer was empowered to determine whether the lighting of the service station was likely to cause annoyance to neighbouring occupiers.

Normally the certifying party is the local council, or one of its employees, e.g. *New Zealand Particle Board Ltd* v. *Rodney County.*[76] But another certifying party may be chosen: in *Stevens Drug Holdings* v. *Christchurch City Council*[77] the objectors were given the right to confer with the appellant over the trees and shrubs to be planted on the appellant's land (although the Council had final determination in the case of dispute).

In *Hall and Brown* v. *Waitemata County Council*[78] the traffic access was subject to the approval of the Transport Department.

At times, the Board did not impose formal conditions, but made suggestions. These suggestions which the Board clearly stated were not legally binding, do presumably carry some weight, as an indication of the Board's attitude.

In *T.H. Ferguson* v. *Mount Wellington Borough Council*[79] the Board offered its "strong recommendation" as to conditions that the Council should impose.

In *Simes* v. *Heathcote County Council*[80] the Board imposed conditions on the maximum number of children allowed at a school, and the minimum number of staff to run it. As well as these conditions, the Board

[72] (1968) 3 N.Z.T.C.P.A. 109.
[73] *Ibid.*, 110; emphasis my own.
[74] (1971) 4 N.Z.T.C.P.A. 104.
[75] (1967) 3 N.Z.T.C.P.A. 74.
[76] (1976) 6 N.Z.T.P.A. 1.
[77] (1963) 2 N.Z.T.C.P.A. 103.
[78] (1966) 3 N.Z.T.C.P.A. 20.
[79] (1966) 3 N.Z.T.C.P.A. 2.
[80] (1964) 2 N.Z.T.C.P.A. 210.

included some strong advice to the Trust running the school as to how these conditions could best be fulfilled.

VII. Conclusion

The 1977 Act effects little change in the statutory provisions as to the imposition of conditions. As a consequence, it is unlikely that councils or the Planning Tribunal will deviate sharply from the standards and practices that have developed since 1953. The use of conditions is a pragmatic solution to a delicate problem. Conditions give councils and the Tribunal sufficient flexibility to dispose of each particular case according to its circumstances and peculiarities.