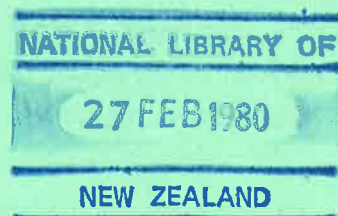


**New Zealand Planning Council**

# the national development bill

Statement submitted to the  
Select Committee on Lands and Agriculture by  
Sir Frank Holmes, Chairman



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STATEMENT ON THE NATIONAL DEVELOPMENT BILL SUBMITTED TO  
THE SELECT COMMITTEE ON LANDS AND AGRICULTURE  
BY SIR FRANK HOLMES, CHAIRMAN, NEW ZEALAND PLANNING COUNCIL

Introduction

The need to reduce New Zealand's dependence on increasingly expensive imported oil has focussed attention on the delays involved in the planning and approval procedures through which development proposals must pass. There is considerable agreement that the procedures "can be frustrating and time consuming for those involved" and that "some streamlining of the planning process can be achieved and should be introduced."<sup>(1)</sup>

The National Development Bill is designed to "streamline" the procedures by providing a "fast track" for major projects, designated as "works of national importance." The Bill raises several issues which warrant the attention of the Planning Council, notably under Sec. 5 of the New Zealand Planning Act.

The Council itself has, on several occasions, drawn attention to the high costs involved for developers, for those questioning intended developments, and for the nation generally, in unnecessary delays, overlapping jurisdictions, and protracted procedures. On the other hand, it has also emphasized the necessity for thorough evaluation of projects, including penetrating scrutiny of them for their environmental and social impacts. It has attached considerable importance to greater openness in Government, to the development of a more constructive partnership between central and local government in regional and national planning, and to the participation of the public in planning decisions which will affect their lives.

All of the foregoing considerations are involved in the National Development Bill. The issues are of such importance that the Council can not stand aside from the public debate. I am accordingly authorized to make this statement to your select committee, on behalf of the New Zealand Planning Council. While what follows is in essence a personal statement, it has been considered in full by

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(1) Open letter by Coalition for Open Government of 24 September 1979, p. 1.

the Council and takes into account a number of points raised by individual Council members.

### Energy Report

The report prepared by the Chairman and others for the Planning Council and the Minister of National Development on the Implications of Energy Developments, contains a section on Environmental and Planning Procedures as follows:-

"A major issue for the energy programme is the extent to which delays may arise in the process of resolving conflicts over the use of resources for development, through the operation of established planning procedures and the efforts of environmental and conservationist groups. The latter have had some impact on Government thinking in the energy field, e.g. in relation to the nuclear option, power planning and such projects as Marsden B. Here, as overseas, they will inevitably, and often beneficially influence the pace and direction of further energy development. As in some other countries also the procedures for planning approvals at regional and local levels are important in determining the location, timing and cost of projects using land, water or other resources.

"There is an urgent need to reappraise present procedures with a view to reducing unnecessary delays without prejudicing open discussion of potential environmental and social impacts. Some of the delays are within the Government's own control to the extent that they stem from lack of speed and efficiency or inadequate co-operation among Government departments in processing applications. The more important question is how one might simplify the current maze of regulations and approvals under different pieces of legislation, through which proposals must go, while allowing for effective participation in open debate by those who believe that the proposals should be stopped or modified in the public interest. This is a question of general importance, but it assumes particular significance for major projects such as many of those discussed here among the options for energy development.

"It is for political judgement whether the unnecessary delays should be eliminated by streamlining present procedures, e.g. by adding works of major national importance to "public works" in the Town and Country Planning Act, or by special legislation designed to bring the hearing of various objections to a single point and establish the broader public interests to be served by the project in question. Whichever route is chosen, important aims should be to encourage, not stifle debate; to inform those potentially affected by the projects and involve the Commission for the Environment as early as possible in the process; for Central Government to co-operate closely with local and regional authorities in the area involved in assessing the public interest; and to do everything possible to encourage open and effective processes of consultation and discussion and to reduce potential sources of conflict and construction delay if the project (modified or not) goes ahead."

This brief statement of principles provides a basis for discussing some important aspects of the National Development Bill.

#### A General Problem

It has been stated that the question of streamlining and simplification of procedures is one of general importance. The major energy projects highlight the need for change, but they are not the end of the matter. We should not become so preoccupied with removing unnecessary obstacles to their progress that we lose sight of the need for reform on a wider front. If the proposed legislation were not succeeded before long by changes in existing legislation to streamline procedures for small and medium sized projects as well, then there would be obvious discrimination against the latter which, in aggregate, may be even more important for national development.

If this is accepted, but if the Government feels that time must be taken to make more general changes, it seems desirable that the present legislation should have a relatively brief life.

If it were to expire in, say, two years, this would give ample time to decide whether other projects could be brought within its scope, with suitable amendments, or whether it would be better to deal with the problems by suitable amendments to other legislation and by streamlining of the procedures of Government itself, local authorities and various agencies and tribunals. Regardless of the outcome of the debate on the National Development Bill, speedy action is needed towards resolving these questions.

The Government has made it plain that proposed legislation will be used sparingly for a few projects of major significance, which must be prosecuted speedily in the national interest. In addition to limiting the life of the Bill, as suggested, it could be desirable to reword section 4 of the Bill to make this clear. Thus the Governor General would be authorized to apply the Act "if he considers that any major Government work or major private work

- (a) will make a large contribution to (i) the production, development or utilization of New Zealand resources (ii) expanding exports (iii) reducing excessive dependence on overseas sources of energy or other imports or (iv) fostering employment, and
- (b) must, in the national interest, be commenced and carried out more expeditiously than would be possible under existing legislation governing such projects."

Before a major work is declared to be of national importance under Section 11 of the Bill, one assumes that it would have been subjected to a thorough evaluation by Government itself. It could be valuable to discussion if the outcome of this evaluation were made public in general terms.

#### A Greater Role for Parliament

Since we are dealing with a few major projects of national importance; the effects of which will be felt for a long period ahead, it seems important that efforts be made to seek the support of

all parties in Parliament (a) for giving them special treatment as proposed in the Bill and (b) for their proceeding as decided after the proposed enquiries are completed. This is particularly the case if a number of existing rights of appeal and review are to be removed.

To this end, the formal approval of Parliament might be sought (a) as to whether a particular work should be designated as of sufficient importance to justify utilizing the provisions of the Bill

and

(b) if the Government wishes to depart from the recommendations of the Planning Tribunal as to the terms on which the work should proceed.

It is true that the opposition parties may, under standing orders, provoke a debate on these issues if they choose to do so. However, to rely on this is to contemplate that the Parliamentary debate should be entirely of an adversary nature. Some believe that this state of affairs is inescapable. With major projects, however, it seems more desirable to seek agreement that they may proceed expeditiously in forms that will be as acceptable as possible to succeeding administrations. Also, especially in a bill which gives such special powers to the Minister, it seems important to give explicit recognition to the desirability of having differences of opinion between Government and Tribunal on such major projects discussed and voted on in Parliament; where both opposition parties and members of the Government party not currently in Cabinet can express any reservations which they may have on the stand which the Executive has taken.

#### Partnership Between Central and Local Government

Recent legislation on local government and town and country planning has been designed to strengthen the partnership between central and local government in planning. The new united and regional councils being created on the recommendation of the Local Government Commission are charged with the responsibility for regional planning. Under the Town and Country Planning Act,

it is envisaged that such planning shall be of broad scope, encompassing economic and social development as well as protection of the physical environment. The Crown is seen as co-operating in the planning and being bound by the outcome.

Under the present Bill, provision is made for the united or regional council and the territorial authority within the district of the proposed work to be informed promptly and to be heard before the Tribunal (although adjacent local authorities are not specifically mentioned as they are in Section 5.8 (i) of the Town and Country Planning Act). It would seem more consistent with the spirit of the recent legislation if specific provision were made for the regional and local authorities to be consulted, even before the proposal to designate the work is made, and certainly in the preparation of any evidence which the Government itself may be putting before the Tribunal. I recognise that this does already happen, but I believe a safeguard is warranted in the context of the present Bill.

As mentioned earlier, for projects of this order there is a long preparatory phase, and it is better that there be consultation with local authorities (among others) in these early phases.

#### Maori Interests

Another group for which I believe specific provision should be made is the Maori people, in view of the importance to them of the issue of alienation of Maori land. I suggest, therefore, that Maori representatives should be accorded particular standing at hearings on any projects affecting their lands, in a similar way as is at present provided for under the Town and Country Planning Act.

Public Participation and Environmental Protection

Greater involvement of the local and regional authorities will contribute towards the public participation in decisions on the projects which is needed to ensure that they are soundly conceived and will improve rather than detract from the economic, social and physical environment of the area in which they are located.

There will always be room for debate about how much time is necessary for adequate public evaluation of projects and their likely impacts. It is evident that, if people feel that they have had inadequate opportunity for such evaluation, then opposition to the projects will continue outside the established procedures, with consequent uncertainty for the developers and possible delays in implementation of the project. The following suggestions are designed to help find the right balance in provision for public participation and environmental review.

Given other preoccupations, I have personally found the time for adequate preparation of comment on this important Bill, and proper consultation with colleagues, too short. Others have no doubt found similar problems. I am grateful for permission to make this statement on behalf of the Planning Council after the prescribed date of 29 October, and hope that other submissions might meet with similar indulgence, if necessary.

Especially if time is short for preparation of evidence for the Commissioner of the Environment and the Planning Tribunal, it would be desirable for "public notice" of proceedings to include notification through appropriate radio and television channels as well as through the print media provided for in the present Bill.

Explicit provision for the involvement of the Commissioner of the Environment is a welcome innovation in the Bill. However, the time given for public submissions to him (6 weeks) is short, and he must complete his audit within 3 months of receipt of the applicant's proposal. Adequate investigation and public



discussion within this time schedule would be facilitated if the Commissioner had been informed of the nature of the project in advance of the formal application for its designation as a work of national importance, and if he had had some influence on the manner in which the application is presented. To this end, provision might be made in Section 4.2 (g) of the Bill for the Commissioner as well as the Minister to be able to require the applicant to supply information in forms which will expedite his inquiries and his ability to involve the public fruitfully in them.

Care should, I believe, be exercised under the provision of Clause 8, Subclause (4) for the requirement to amalgamate submissions under Sub clause (1) (f) and (g). Under the proposed Bill, the Planning Tribunal assumes responsibilities now exercised by other authorities under 28 specified Acts of Parliament. In order that the expertise which these authorities have accumulated should be brought to bear on the important projects involved, some explicit provision should be made for them to be consulted in a manner which enables them to bring considered evidence to the Tribunal within the time allowed.

The question has been raised of the breadth of competence and experience called for if Tribunal members are to be able to handle the complex detail of the projects likely to be examined. I have not had time to go into the relative merits of vesting competence in a Tribunal or a Commission of Inquiry for the purposes envisaged in the Bill. But the point of individual capacities within the Tribunal certainly merits careful study.

#### Other Constitutional Issues

The Bill raises important constitutional issues. I have already considered the role which Parliament might assume. While accepting that Government, subject to Parliament, must make final decisions, several Council members were uneasy about provisions which appear to reduce existing rights of appeal to the Courts on points of law. One problem which became evident in our discussion was that different members put different interpretations

on clauses of the Bill with important implications in this area, e.g., what "lack of jurisdiction" means in Clause 16 and what Clause 5 (2) is designed to achieve when it gives the Minister power to delete certain specified types of consent. The fact that Council had this difficulty suggests that clarification is desirable. Moreover, if fear of prolonged tactical exploitation of Court procedures and delays in the processes of the law are the basic reasons for the truncation of rights of appeal, it would be desirable for the Committee to investigate, with judicial authorities and the Law Society, the possibility of overcoming these problems more directly with rights of appeal preserved, but provision made for the appeals to be settled within a reasonable time. Streamlining, rather than bypassing, is what is needed.

#### Conclusion

I trust that I have made it clear that I support the streamlining of present planning and approval procedures. Indeed, the proposal that this legislation should have a "sunset" clause emphasizes the need for the extension of streamlining to projects not sufficiently major to justify designation under this Bill. Nevertheless, it is important that every effort be made to achieve streamlining in ways that will foster open discussion of the choices involved, develop the evolving partnership between Central Government and local authorities in regional planning, provide for adequate public participation in the evaluation of the impact of the proposals, and safeguard important constitutional rights. This statement has tried to suggest ways in which the proposed legislation might be improved to strike the right balance among the different objectives which the Bill is seeking to achieve.

APPENDIX A  
SUPPLEMENTARY INFORMATION

NEW ZEALAND PLANNING COUNCIL

Chairman SIR FRANK HOLMES

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28 November 1979

Hon. L.C. Schultz,  
Chairman,  
Select Committee on Lands & Agriculture.

Dear Mr Schultz,

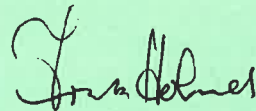
When I appeared before your committee on 15 November to present the submission of the New Zealand Planning Council on the National Development Bill, I undertook to communicate in writing before the end of the month on one important issue which was raised during the hearing. This related to the way in which Parliament as an institution might be more closely involved in the procedures envisaged in the Bill. More specifically, Mr Palmer asked whether the Order in Council provided for in section 11 might be replaced by a separate Bill for each project.

As indicated to the committee, I have taken legal advice on this proposal. Dr Colin Aikman, an eminent constitutional lawyer, has prepared an opinion on the process of parliamentary review which might be appropriate. This suggests that a separate Act of Parliament for each project might in fact introduce further delays whereas the principle of the "fast track" could still be adhered to if the Order in Council were laid before Parliament with a provision that it would take effect only when approved by affirmative resolution of the House. A variant of this procedure would have the instrument taking immediate effect but require approval by affirmative action within the stated period as a condition of continuance. Under either approach an investment project would only be implemented after open debate in Parliament. In my view this technique would remove many of the objections which have been raised about the present draft Bill and would be perfectly consistent with the Council's own submission.

You will appreciate that in the time available, I have not been able to seek the reactions of my colleagues on the Planning Council to Dr Aikman's opinion. I shall of course do so at our next meeting on 5 December.

However, in the hope that it may be useful to you and the Select Committee, I am forwarding it to you on my own initiative, along with an annex in which Dr Aikman outlines the procedures available for Parliamentary supervision of delegated legislation.\* As this material meets a request made during my examination by the Committee, I presume that you will make copies of it available to the press.

Yours sincerely,



Frank Holmes  
Chairman

\* Copies are available on request from New Zealand Planning Council, P.O. Box 5066, Wellington.