THE NATIONAL DEVELOPMENT BILL

A submission by the New Zealand Ecological Society to the Lands and Agriculture Select Committee

INTRODUCTION

The New Zealand Ecological Society, founded in 1951, has about 450 members, including the majority of professional ecologists working in Universities and in Government Departments. The Society is a Member Body of the N.Z. Royal Society, which *is* the senior organisation of New Zealand scientists set up by Act of Parliament to advise Government on scientific matters. During the last 28 years the N .Z. Ecological Society has been actively involved in the conservation of natural and modified plant and animal communities. We therefore have a special interest in legislation affecting New Zealand's fauna and flora and the natural environment.

Later in this submission the various aspects of the National Development Bill which concern us as ecologists are dealt with clause by clause. However, *we wish to emphasise here and now our main criticisms which are as follows:*

1. the Bill may prevail over much present environmental legislation;
2. proposals may be designated as projects of national importance with minimal opportunity for public scrutiny and comment;
3. the Minister of National Development has the power to authorise works to proceed, regardless of the recommendations of the Planning Tribunal;
4. Orders in Council may not be challenged in any Court;
5. there is insufficient time allowed for detailed study and criticism of proposals and Environmental Impact Reports; and
6. the Planning Tribunals are inappropriate bodies to deal with large, complex projects of national importance because they lack the expertise necessary to evaluate the diverse technical and scientific information involved.

SUPPORT FOR THE NATURE CONSERVATION COUNCIL MOTION ON THE NATIONAL DEVELOPMENT BILL

The New Zealand Ecological Society resolved at its Council Meeting of 24 October 1979 *to support the motion passed by the Nature Conservation Council at its briefing session on* 9 *October* 1979.

The Nature Conservation Council motion, passed unanimously by the representatives of the many environmental and other organisations present, was as follows:

> "That this Bill seeks to concentrate unnecessary power in the hands of the executive arm of Government and more particularly the Minister of National Development *in the guise of streamlining planning procedures*. That concentration of power *is not necessary* to achieve the ostensible aim of the Bill. As *it* stands it *is* a disturbingly radical proposal that cuts at the heart of the democratic process. The checks and balances within our socio-political system are essential to the preservation of the rights of the individual. Tile emasculation of the role of the Courts that would occur if this Bill is passed is a factor that far outweighs the benefits that might accrue.
>
> *Recommendation*
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> That all the individuals and organisations represented here agree to oppose the National Development Bill on the grounds that the authority vested in the Minister *is* unwarranted and unnecessary to achieve the aim, which we support, of streamlining planning procedures."

A CRITIQUE OF THE NATIONAL DEVELOPMENT BILL

1. We support genuine attempts to simplify planning procedures, but stress that these should not be at the expense of public involvement in planning. In many respects, the National Development Bill is the antithesis of the Town and Country Planning Act 1977 which provided for: ". . . greater public involvement in the planning process, especially in the initial stages".
2. The statutory recognition of the Commissioner for the Environment is a welcome move and should be implemented regardless of what happens to this Bill.
3. It is important that interested persons should have access to all information concerning proposed developments. In this regard, we support the provision in *Clause 5 (4)* for the supply to any person of a copy of any application which has been referred to the Tribunal, and all documents and plans which accompanied it.
4. 4.1 We are very disturbed by *Clause* 2 of this Bill, which states that: "This Act shall prevail

over the Acts specified in the Schedule to this Act . . . ". Many of the Acts listed in the Schedule concern the environment and were slowly, carefully and thoughtfully planned, with full public participation. We refer in particular to the Clean Air Act 1972, Forests Act 1949, Harbours Act 1950, Health Act 1956, Land Act 1948, Marine Reserves Act 1971, National Parks Act 1952, Reserves Act 1977, Soil Conservation and Rivers Control Act 1941, Town and Country Planning Act 1977 and Water and Soil Conservation Act 1967.

4.2 We consider it to be most undesirable that the regulations of these Acts should be set aside whenever the Minister of National Development deems it necessary *(Clause* 5 (2)). Deletion of any or all of the consents required under the statutory provisions of the various Acts listed restricts the matters to be taken into account by the Tribunal *(Clause 9*) and prevents some persons or bodies with statutory authority to grant consents from being heard at the inquiry *(Clause 8 (1)* (e)) even though they were included in the list required for Clause *4 (2) (e)*.

4.3 Another matter of considerable concern to the Ecological Society is that whereas at present a special Act of Parliament (with opportunity for public debate) would have to be passed to change the use of a National Park, State Forest, State Forest Sanctuary of New Zealand Reserve, under the National Development Bill these areas could be drastically modified or "developed" on the decision of one Minister who could, if he so decided, disregard public opinion and the recommendations of the Planning Tribunal *(Clauses 10, 11*).

5. 5.1 *Clause 4 (1)* makes the decision to apply the provisions of this Bill the sole prerogative of the Minister of National Development. We consider this to be totally unacceptable. Developments which could possibly be of national importance should be referred to the Planning Council, and subject to extensive public debate, after which submissions from individuals and organisations should be called for. Provision for these actions should be written into the Bill, particularly as the criteria for designating a project as being of national importance are so all-encompassing.

5.2 In *Clause 4 (2)* applications for the provisions of this Bill to be applied to any work need offer only a *general* description of method of construction *(Clause 4 (2)* (c)), a *general* description of the proposed work *(Clause 4 (2) (d))* and a *statement* of the economic, social and environmental effects of the proposed work *(Clause 4 (2)* (f)).

We strongly suggest that the applicant should be required to supply *detailed information,* sufficient to allow a full assessment of the proposed work to be made.

5.3 Although the Minister can require the applicant to supply further documentation *(Clause 4 (2)* (g)), we believe that the Commissioner for the Environment should also have the statutory right to call for additional reports, plans, statements and information. This would greatly facilitate the subsequent auditing of the Environmental Impact Report *(Clause 6)*. All of the documentation should be made available to the public *(Clause 5 (4))*.

5.4 We find unacceptable the provision in *Clause* 4 (3) that the validity of any Order in Council shall not be challenged or called in question in any Court (see also *Clause 15*). This is contrary to the basic principles of a democratic society.

6. 6.1 Projects of national importance are likely to be large and complex and to require the collection, collation and evaluation of information on the environment of the particular regions concerned. The period of six weeks to make submissions to the Commissioner for the Environment on the Environmental Impact Report *(Clause 6 (2)* (c)) is far too short to allow even for the evaluation of existing information. There is no possibility under such a time regime for scientific surveys or other investigations to be carried out.

6.2 The Commissioner for the Environment is required to complete his audit of the Environmental Impact Report within three months from the date he receives it *(Clause 6 (3))*. There is no provision for this period to be extended. It would therefore be impossible for the Commissioner to initiate any research or enquiries which would extend beyond the deadline. If the Commissioner is to audit the Environmental Impact Report rigorously he should have the discretion to extend the time period for his investigations.

6.3 The Planning Tribunal has to give priority over all other work to an inquiry under this Bill *(Clause 7 (7)*). Accordingly, it is likely that the Commissioner for the Environment will have to do likewise for the associated Environmental Impact Report, as will any scientists concerned. This necessity raises some

doubt as to the capability of the scientific manpower of the country to respond to such demands. Not only is time limited for each investigation, but if there are many projects concerned the quality and quantity of scientific data collected must decline. There would also be considerable disruption of existing research programmes.

6.4 The servicing of Environmental Impact Reports noted above would be costly in time, manpower and resources and also in monetary terms. There is probably a case for allocating funds to finance some of the scientific work needed to examine the likely impact of a proposed development; possibly the amount could be a fixed percentage of the estimated cost of the project, levied on the applicant.

7. 7.1 The requirement that the Tribunal give priority over all other work to inquiries under this Bill *(Clause 7 (7))* would seriously disrupt many other inquiries, possibly of considerable regional importance.

7.2 Proposed developments which come under this Bill are likely to be large and complex. We seriously doubt whether the Planning Tribunals set up under the Town and Country Planning Act 1977 are the appropriate bodies to deal with matters of national, as opposed to regional, importance. The Tribunal may not have the necessary expertise to evaluate the information on the economic, social and environmental implications of the proposed work.

7.3 The number of expert assessors who may be appointed by the Planning Tribunal is limited to two *(Clause 7 (9)*). It is certain that in most cases a much greater range of expertise will be needed. A multi-<lisciplinary team of experts would be essential to evaluate large amounts of diverse technical and scientific information, in addition to the expert witnesses which the Tribunal may call.

7.4 There should be some provision for the Planning Tribunal to require an applicant to prepare a new Environmental Impact Report if the Commissioner for the Environment has deemed the original one inadequate.

8. 8.1 The right to be heard at the inquiry *(Clause 8 (1)* (e)) should apply to all persons or bodies with the authority to grant consents (as listed in *(Clause 4 (2)* (e)), notwithstanding any deletion of consents made by the Minister under *Clause 5 (2)*.

8.2 We object strongly to *Clause 8 (4)* which gives the Tribunal the right, during the inquiry, to direct two or more parties to make joint submissions. Submissions considered by the Tribunal to be "similar" e.g. on environmental issues, could in fact be very different in scope and scientific content. There would probably be very little notice given that submissions should be presented jointly and the time available to amalgamate submissions would be short. It is also probable that minority viewpoints would be masked in joint submissions.

9. *Clause 11* requires the Minister to make public the report and recommendations of the Tribunal within one month of receipt. However, he could declare a project of national importance within a day or two, authorise it to proceed, and yet deny public access to the report and recommendations of the Tribunal for almost a month. The publication of the report should not be delayed once the Minister has made his decision.

10. 10.1 It is probable that where "applications for further approvals" are made *(Clause 13 (1)),* in some cases they are a consequence of changes in a proposed development. Where this is so, there should be provision in the Bill for any parties affected by changes in a project to be represented at the new inquiry.

10.2 All changes in developments should have to go through the full investigative procedure, having first been properly described as required by *Clause 4 (2)*. A new Environmental Impact Report, referring only to the likely effects of the changes, should be prepared and audited.