

The New Zealand Planning Council

G. J. Van Bohemen*

Social, economic and cultural developments are becoming increasingly dependent upon the interaction of different members of society. The New Zealand Planning Council represents a new means of co-ordinating activity within the community and bringing the attentions of the government to bear on the needs and aspirations of the citizens. The writer discusses the setting up of the Council and the constitutional implications of its existence. He suggests that some cherished constitutional conventions are being ignored or bypassed in favour of expediency and efficiency.

“[There are those to whom] it is of no importance how the powers of the State are distributed, nor how far they overlap each other, so long as the actual business of administration gets itself done. Speed in conception and efficiency in execution appear, in their view, to be more important than the kind of regime under which men live and the measure of personal liberty which they are permitted to enjoy. This view was epitomised long ago in the cynical couplet —

For forms of government let fools contest,
Whate'er is best administered is best ¹

a sentiment which might well be adopted by any totalitarian dictator; but it has not been the motto of the generations of Englishmen who have spent blood, toil, and tears over ‘forms of government’.”²

With these thoughts in mind, it is proposed to examine the New Zealand Planning Council, the Report which prompted it, the Council as it first existed, and the legislation which gives the Council a statutory basis.

I. THE TASK FORCE REPORT

In 1976 a Task Force on Economic and Social Planning was established with the aim of studying previous experience with planning in New Zealand and of recommending an institutional framework to meet present-day requirements for planning. The Task Force was given a broad mandate to look at private and

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1. Alexander Pope *An Essay on Man* Epistle III.

2. C. K. Allen *Law and Orders* (3rd ed., London, 1965) 17-18.

public sector planning in New Zealand. It was also asked to examine the main issues affecting the country's economic and social development which would need to be taken into account by those concerned with planning.³ The Report of the Task Force was published in December 1976 under the title *New Zealand at the Turning Point*. It acknowledges the unusual scope of the inquiry, yet despite the fact that no public hearings were held, as is usual with the normal commission of inquiry, it was believed that the evidence submitted to it gave a sufficient basis upon which to analyse and evaluate the issues affecting New Zealand, and to suggest the planning mechanism, now known as the New Zealand Planning Council.

Since publication of the Report its recommendations for the establishment of the Council have been put into practice, though the system as it is now constituted differs in some significant details from that proposed — particularly in the presence of the Minister of National Development on the Council.

The Report clearly states that there is no intention to change existing statutory or constitutional procedures,⁴ though a closer reading of other parts of the Report suggests that the mechanism was developed for pragmatic reasons — the need for New Zealand to be more aware of longer-term development — while general constitutional principles were largely ignored. Inadvertent conflict with existing constitutional procedures may have resulted. The Council seems to be a large and nominally independent body with uncertain powers, affecting a large range of issues of both everyday and governmental life, yet subject to little formal control. The scope and functions of the Council are expressed in vague terms in both the Report and the legislation, which could lead the more cynical observer, not imbued with the same faith in human nature that is reflected in the Report, to see either the growth of a large bureaucratic machine which straddles all levels of community and governmental activity and which is responsible to no one, or the establishment of yet one more governmental advisory group which will become bogged down in the quagmire of administrative government, or — possibly worst of all — one which may have no real impact at all.

However, before an analysis is made of the actual planning mechanism, it is useful to look at the issues of New Zealand's social, economic and governmental life discussed in the Report to see the context in which the mechanism is intended to operate.

A. The Role of Central Government

At the outset the Report stresses the "crucial role" of the government in planning in New Zealand. However the reasons for this role reflect the pragmatic emphasis of the inquiry. Rather than pointing to the obvious democratic principle that the people elect the government to "run" the country, the Report looks to more functional reasons: for instance, the fact that the government is an important customer of private enterprise, and that through its policies on taxation, expenditure, credit control, exchange rates, overseas borrowing and income regulations, it influences growth, and stability of output and employment.⁵

3. *New Zealand at the Turning Point: Report of the Task Force on Economic and Social Planning* (Wellington, December 1976) i. This is referred to here as the Task Force Report.

4. *Ibid.*, 347.

5. *Ibid.*, 7.

B. The Record of Consultative Planning

The only previous attempt at a coordinated, comprehensive national planning system was the National Development Conference of 1968-69 which led to the National Development Council. The conference had a predominantly economic focus, though social, educational, and cultural issues were considered, if somewhat peripherally. The National Development Council was established with sixteen separate sector councils, each responsible for a specific area (e.g. Forestry, Mineral Resources). The Council was designed to evaluate and oversee the work of the sectors and to provide a direct link between planners and government. The Deputy Prime Minister chaired the Council which included one other senior minister and two departmental heads as well as representatives of various economic interest groups and a few individuals chosen for the contribution they could make to planning. The Labour Government of 1972-75 changed the nature of the structure, incorporating it even more fully into the government machinery. The National Development Council was abolished, and the responsibility for coordinating planning was taken over by the Cabinet Committee on Policy and Priorities. Most of the sector councils were retained, but each was made responsible to an appropriate minister, and some were placed under ministerial chairmanship.

Despite favourable comments about some sector councils, the Report concluded that as a coordinated planning structure the National Development Council failed, gradually losing momentum. Two general criticisms were made:

- (a) Weak links were established between the planning work done and decisions taken by government, and there was a lack of coordination and central focus to the system.
- (b) There was a tendency to evade rather than face up to fundamental issues of determining priorities for development and formulating operational guidelines.

More specifically it was held that the system was too big. The number of sector councils resulted in the central council being flooded by reports and being left with insufficient time to consider issues or to formulate a coordinated plan for growth. Furthermore, in spite of the strong government influence present in ministerial representation, the National Development Council system was deficient in its relationship to government because the structure was unsatisfactory in bringing planning to bear on government action. Conversely, the influence of government representatives resulted in too little independent assessment of key issues and policy options. Excessive dominance was also exerted by powerful interest groups which tended to obscure central issues and mitigate against unbiased analysis. Individual sector councils themselves proved to be lacking interest even when chaired by ministers. The problem of coordinated central planning was further exacerbated by the fact that other government bodies like the Health Services Advisory Committee, which, though similar to some sector councils, were not formally tied to the National Development Council system. The proposed New Zealand Planning Council structure shows a deliberate attempt to avoid the pitfalls encountered by the National Development Council.

C. Trends in New Zealand Society

Having looked at the role of Government and evaluated the National Development Council system the Report discussed a number of trends that must

be considered in any planning system. The obvious point was made that as circumstances change the priorities of planning change, and so identification of trends was a vital necessity.

(a) Social: The main issues in this sphere concerned population distribution, New Zealand's multicultural nature, the changing role of women, the importance of the environment, and the nature of our present social services. The concern for more effective treatment of social problems is one area where one of the essential ingredients of the proposed planning structure is evident: community participation. The general conclusion reached was that New Zealand needs more coherent and informed policy making on a longer term basis through a coordinating machinery that is both efficient in the distribution of resources and responsive to actual community needs.

(b) Regional: As in the social sphere central government machinery is inadequate to cope with the varying needs of specific localities. There must be provision for community involvement at a level above service in local drainage or roading boards. The regional setting was one area that the Task Force saw to be most useful in engaging active community participation in planning.

(c) External and economic forces: Concern about the lack of cohesive financial policy in relation to New Zealand's isolated and fragile position in the economic world led the Task Force to recommend adjustment of internal and economic policies and to urge that foreign policy formulation be brought more closely into the planning framework.

(d) Public sector reorganisation: The Task Force recommended a number of changes in this area. Most significantly it called for greater attention to be paid to the planning of long term objectives with government departments and greater cohesion to be fostered between departments. Equally, there must be more coordination between public and private sector planners.

The issues above are dealt with only sketchily but serve to focus on the kind of work the New Zealand Planning Council will be concerning itself with. However, before looking at the New Zealand Planning Council structure itself, it is useful to consider traditional lines of governmental authority.

II. THE TRADITIONAL MODEL OF GOVERNMENT

New Zealand is traditionally seen as a two-party democracy with ultimate power vested in a legislature elected directly by the people. The Cabinet provides the effective government of the country but is collectively responsible back to Parliament. If the government loses parliamentary support it must either resign or go back to the people for a new mandate.⁶ The lines of authority and responsibility run back from Cabinet through Parliament to the electorate. Each Cabinet minister has a number of portfolios and heads these government departments. The convention of ministerial responsibility has evolved by which each minister is personally responsible to Parliament (and therefore to the electorate) for the actions of his department:⁷

It is a basic principle of the constitution that each Minister is responsible to Parliament for the conduct of his department. The act of every member of the department is regarded as the act of his Minister.

6. De Smith *Constitutional and Administrative Law* (2nd ed., Harmondsworth, 1973) 36.

7. *Security Intelligence Service: Report by Chief Ombudsman* (Wellington, 1976) 51.

In this way control is theoretically maintained over the vast bureaucratic machine that all modern governments spawn. It is difficult to see just how the New Zealand Planning Council structure accords with these conventions of our constitution.

III. THE NEW ZEALAND PLANNING COUNCIL

A. Aims

The stated aims of the mechanism in the Report were:⁸

- (a) to provide for widespread, two-way consultation between representatives of central government, the private sector, and institutions at the national and regional level. The aim is to obtain as much consensus as possible on longer-run national goals (thus helping governments to determine appropriate priorities in their own programmes), to formulate guidelines for development in the private and local body sectors and to establish sound criteria for central government to use in assisting the process of development.
- (b) The system should establish stronger links than in the past between the outcome of consultative planning and the actual decisions made by government:⁹

It is in the national interest to ensure that these decisions are not short-sighted, and in particular that they rest on a broad understanding by decision-makers of a complex range of economic factors, together with the relevant social, cultural, and environmental considerations.

- (c) There should be more effective coordination of planning and a move away from the compartmentalised habits which dominate much of New Zealand's planning work.
- (d) To provide for independent assessment of important trends, of actual performance in relation to the achievement of agreed objectives, and of alternative strategies or policies which might be adopted.
- (e) To improve the workings of democratic government within New Zealand by providing the community with more adequate information, as well as the opportunity to comment on the main issues of national development.
- (f) To prepare a "plan" — a set of documents reviewing progress so far, and also indicating the view of government about the direction development should take over the next five years.

These proposals show some of the confusing, if possibly contradictory, functions of the planning process. Objects (a) and (e) suggest wide community participation in planning — a participation that is in direct contact with the planning process, while objects (b) and (c) and (f) suggest that the system will be very closely tied to government activity, and could be an extension of governmental activities. Conversely, object (d) presupposes objectivity and freedom from government influence.

B. Functions of the Council and the New Zealand Planning Act 1977

The Task Force proposals about the aims of the Council are all embracing, seeking to involve all levels of the community. However, the question must be asked — is it really possible to combine all these elements within a single system,

8. The Task Force Report, *op. cit.*, 343-345.

9. *Ibid.*, 344.

and more especially, how prominently does the government feature in the system, and how much of the system involves "government" work?

Having outlined the structure of the mechanism, the Report went on to say that it was not intended that the planning process should interfere with existing statutory or constitutional procedures:¹⁰

In the main however the above systems should enable a number of agencies to operate more effectively and in a climate of greater awareness of long-term goals.

To state the matter in a nutshell, the mechanism has no executive functions. Despite this disclaimer of executive functions, other statements in the Report, and section 5 of the Act, seem to suggest that there is a certain amount of executive power being placed in the hands of the New Zealand Planning Council.

Speaking of the links between Cabinet and the Council the Report recommended that the chairman or other members of the Council could periodically attend meetings of the Cabinet Committee on Planning:¹¹

This would assist in bringing longer-term considerations and the outcome of consultative planning to bear more effectively on decisions made by government.

An even clearer statement of the influence of the Council in government was made in the context of the Commission for the Future:¹²

The Commission would also be more concerned with pointing up long-term options for public information and discussion than with making recommendations on priorities and participating in the decision-making processes of government, as the Planning Council would.

These statements indicate that the Council could have a much more positive role than was first apparent, and it may be actually taking over some governmental functions without being subject to formal controls.

The functions of the Council set out in the Planning Act are described in section 5 as:

- (1) The general functions of the Council shall be —
 - (a) To advise the Government on planning for social, economic, and cultural development in New Zealand:
 - (b) To assist the Government to co-ordinate such planning:
 - (c) To comment to the Government on programmes for social, economic, and cultural development in New Zealand, and to recommend the priorities that should be accorded to them:
 - (d) To act as focal point for a process of consultative planning about New Zealand's medium-term development:
 - (e) To foster discussion among those agencies (Government and private) concerned with planning, particularly in the economic, environmental, social, and cultural fields:
 - (f) To submit advice to the Government on links between planning at the national and regional levels:
 - (g) To prepare reports on any matter affecting the economic, social, or cultural development of New Zealand:
 - (h) To submit any report prepared by it to the Minister if it thinks fit:

10. *Ibid.*, 347.

11. *Ibid.*, 352.

12. *Ibid.*, 371.

- (i) To recommend that any report submitted to the Minister under paragraph (h) of this subsection be laid before Parliament:
 - (j) To publish documents on planning topics which in the view of the Council merit wide consideration and public debate:
 - (k) To consider any other matter which is referred to the Council by the Minister or which is relevant to the proper performance of the functions mentioned in paragraphs (a) to (j) of this subsection.
- (2) The Council shall have such other functions, powers, and duties as are conferred or imposed on it by or under this Act or any other enactment.
- (3) The Council shall have such other powers as may be reasonably necessary to enable it to carry out its functions.

Apart from the questions of semantics and priority allocation of functions within subsection (1) (which are discussed under the heading of *The New Zealand Planning Act 1977* below), section 5 appears to bring confusion to the role of the Planning Council, especially in the relationship of the New Zealand Planning Council to government, to Parliament, to interest groups, and to the community. The first obvious point is that the government figures prominently: Paragraphs (a), (b), (c) and (f) are all concerned with a direct Planning Council to government link, paragraph (e) puts the government agencies in the forefront of consultation with planning agencies, and paragraph (d) must include the government also.

Paragraphs (a) and (f) give the Council an advisory body capacity similar to a multitude of other governmental advisory bodies. Paragraph (c) goes further, giving the Council the power to recommend priorities for planning, but still subject to governmental approval. Paragraph (b) is the most general of the proposed functions. It is a fine line to draw between cases where assistance is the mere offering of advice, and where it includes some exercise of governmental authority. Doubtless these paragraphs reflect the Task Force's assertions of the prominence that Government must have in any planning for New Zealand's development, but with such a governmental prominence, the question is raised: how independent will the Council be, and what effect will this have on its links with other spheres of planning authority? It seems difficult for the Council to be deeply involved in government work and still remain independent.

The relationship of the Council with Parliament does not show through very clearly in section 5. The Task Force repeatedly stated that the system was to be open to Parliament as much as to Cabinet. However, section 5 contains only one paragraph — (i) — dealing with the liaison between the Council and Parliament, and that paragraph does not leave a particularly wide access for information or participation. There is a double filter that can be imposed on the information before Parliament actually receives it. The Council must decide which reports to recommend that Parliament see, and it appears that the Minister has the discretion to decide whether that material should go to Parliament. This possibility of screening information may never be imposed, but there is no safeguard that it will not be. Certainly, parliamentary participation is not as actively encouraged in the New Zealand Planning Council context as it is in that of the Commission for the Future. Besides section 10 of the Act providing for representatives of the Opposition as well as a Minister of the Crown, section 9 (1) (b) provides as one of the functions of the Commission:

To make information on those possibilities¹³ available to all Members of Parliament, and to publish such information for wider dissemination:

As well as the importance of government involvement in planning, the Task Force emphasised the desirability of community participation. However, section 5 does not offer great scope for active involvement in the Planning Council especially by individuals. Paragraph (d) which says the Council will act as a focal point for planning would seem to imply availability of the Council to the public, but the paragraph is so wide its meaning is unclear. Paragraph (e) seems to be restricted to private and government agencies. Paragraph (j) contains the only reference to the general public but their role seems to be quite passive — to be presented with documents which they can discuss. There is certainly not the positive encouragement that is given to public debate in the functions of the Commission for the Future, provided by section 9, paragraph (b) above, and paragraph (c) :

To promote discussion on those possibilities and information relating to them.

Absence of such positive public availability of the Council's operations seems to make the aim stated in the Report (to improve the workings of parliamentary democracy in New Zealand by giving the public more adequate information) sound a little hollow.

Section 5 seems to have resolved the balance of the Council's function heavily in favour of the Government. It is possible, therefore that the structure will be far more executively oriented than the original intention of the Report would have indicated, and combined with the changes in the membership of the Council, could make the system similar to a government advisory body rather than anything else.

C. The Mechanism

The Task Force proposals for the planning structure have been modified with the establishment of the Council. The original conception stated in the Report was:¹⁴

- (a) A New Zealand Planning Council of seven to eight members, headed by a full time, independent chairman and selected on the basis of personal ability rather than their status as representatives of particular interest groups. However it was still hoped that the overall composition of the Council would reflect a broad image of New Zealand society. The status of the chairman would be protected by placing his appointment with Parliament in the same way as the Ombudsman.
- (b) Three consultative groups of about 20-25 members, to assist the Council in the economic, social and regional areas. These groups, to be known as the Economic Committee, the Social and Cultural Committee and the Regional Committee, would be chaired by members of the Council.
- (c) A Planning Secretariat of up to twelve professional officers, serving the Council and its Committees. The staff would be drawn from outside the public service as well as from within it, and would provide the day to day focus for planning activities.

13. I.e. the various possibilities for the long-term economic and social development of New Zealand. See section 9(1)(a).

14. The Task Force Report, op. cit., 345-347.

The first part of the system, (a), reflects a desire to avoid a number of the faults of the National Development Council system: freedom from excessive governmental influence guaranteed by the independence of the chairman, and with no provision for actual ministerial representation. Also the dominance of powerful interest groups which was detrimental to the National Development Council is avoided, while still retaining some sense of the New Zealand Planning Council being representative of the community. The parallel with the Ombudsman and the position of the chairman is a little confusing. In origin, the Ombudsman was seen as an officer of Parliament, and acted as a watchdog over administrative action. Therefore to some extent, he assisted Members of Parliament to keep ministers in line. The chairman would seem to have more general and more positive powers than that.

The three consultative groups are designed to cover a broad spectrum and avoid the small sectoral approach of the National Development Council which was so big in numbers of sectors that it was difficult to coordinate.

D. Membership of the New Zealand Planning Council

The Council has since been established with some obvious differences in the membership of the controlling body itself. Section 6 sets out the structure of the Council:

- (1) The Council should consist of —
 - (a) Not more than 12 members to be appointed by the Governor-General on the recommendation of the Minister [of National Development], of whom one shall be appointed as Chairman:
 - (b) The Minister [of National Development]:
 - (c) The Secretary to the Treasury.
- (2) In recommending persons for appointment as members of the Council the Minister [of National Development] shall have regard to —
 - (a) Their personal attributes; and
 - (b) The need for a diversity of knowledge and experience in fields relevant to the functions of the Council to be present among its members; and
 - (c) The capacity of the Council as a whole to promote a sense of common purpose among different sections of the community in planning New Zealand's future.

Subsection (2) follows closely the Task Force recommendations. Members are chosen on merit, yet reflect in some way the general image of New Zealand society. However, subsection (1) has a number of differences. Firstly, it is virtually double the original size. More significant are the statutory inclusions of the Minister of National Development and the Secretary to the Treasury. The inclusion of the Secretary to the Treasury reflects one of the factors the Report saw as desirable for the planning process — close links with the Treasury. However it is the position of the Minister and his possible influence that is the most puzzling point. How much will his presence affect the independence of the Council?

The Act does not state any clear principle of the independent status of the Chairman of the Council, nor of the Council itself though section 7 does provide specific terms of appointment of not more than five years for the Chairman and four years for other appointed members of the Council. Therefore the members

hold office for a period longer than that of a government, guaranteeing some independence of tenure and safeguards removed from political considerations.

Nevertheless political influence can be exerted less drastically than this, particularly through the role played by the Minister. In its evaluation of the National Development Council the Task Force was definite in its conclusion that government representatives became increasingly dominant thus reducing the possibility of independent analysis of key issues and policy options. To ensure that this negative tendency would not reappear in the New Zealand Planning Council the Council was to be independent, the Chairman's status was to be safeguarded, and no reference was made to the inclusion of a Minister. Another reason for these moves was that it was hoped the planning system would attract the support of all political parties, and would have the confidence of all interest groups.

It is interesting to note that in his paper that formed the basis of the Commission for the Future Professor J. F. Duncan also expressed the hope of support for the new Commission so that it would not be subject to political manipulation by government. He did admit that:¹⁵

There is something to be said for appropriate ministers to be members of the governing body, so that its thinking could directly stimulate the political machine.

But he also said:

If it is to remain dispassionate and unbiased however, and not merely a creature of government, the opposition would need then also to have a place on P.O.C.¹⁶

The Commission for the Future follows the Duncan suggestion, having representatives of the Government and the Opposition sitting on it. However the New Zealand Planning Council does not even have the saving grace of a member of the opposition, so there is a danger of the Council being prone to the same pitfalls as the National Development Council. On the other hand constitutionalists might find some merit in the presence of the Minister because in some way he may represent a formal constraint on the power of the Council, through an extension of the convention of ministerial responsibility. However the relationship of the Minister to the Council is very different from that of other bodies with ministerial representatives. It is the usual case for a Minister to be the Chairman of any body on which he sits. Just how the Minister and the Chairman will work out their respective authority can only be determined by experience.

The present Minister has told the Council that he sees his position to be that of a broker, bringing the views of Cabinet to the Council and conversely bringing the Council's views about to the possible future development of New Zealand to Cabinet. Stated in these terms the Minister seems to be no threat to the independence of the Council, but this type of relationship depends very much on the personality of the Minister and is not, and probably cannot be, legislated for. The position could well change should a new Minister be appointed.

As mentioned earlier, the other side to the coin of ministerial representation is ministerial responsibility. The "brokerage" view of the minister's position would

15. *Policy Options for the Future of New Zealand* (Chemistry Department Report No. 8, Victoria University of Wellington, 1975), 49.

16. The Policy Option Commission. Since the writing of that article, the Commission for the Future was established along lines very similar to the proposed P.O.C.

seem to negate the suggestion that the minister is personally responsible for the actions either of the Council or the Secretariat. Yet it is unlikely that the minister can stand apart from formal proposals coming from the Council.

The present structure seems then to be a strange marriage between independence and ministerial responsibility, with the balance at present lying in favour of independence. As stated above the position could well shift with changes in the personalities of the Minister and of the Chairman. One wonders what will happen in the case of a conflict between the view of the Council and that of Cabinet — will the minister feel compelled to push the Cabinet view? Other situations could arise from the desire that the Council be privy to the working of government departments. What if a colleague heading another government department feels obliged to stand up for his departmental advisers who are reluctant to allow Council intervention? Will the Minister stand up for the Council, or will he support his colleague and direct the Council elsewhere?

The position at the moment is uncertain. Certainly without government representation the New Zealand Planning Council seemed to have no formal constitutional restraints imposed on it, and with the large range of powers it might have, it would seem to show a rejection of normal constitutional procedures in favour of the practical desirability of independent assessment of planning activity. The other possibility of strict ministerial control was decried in the National Development Council framework and does not seem likely to exist here. On the face of things, the New Zealand Planning Council is still independent and not susceptible to constitutional checks, yet the possibility remains that such checks will be imposed by political considerations, thus reducing the desired independence.

IV. THE PLANNING COUNCIL — ITS RELATIONSHIPS

The strong governmental bias reflected in the Act's statement of the Council's functions, plus the changes in its membership seem to suggest the possibility at least of a change in the role of the Council from that envisaged by the Task Force. The discussion so far has suggested a very strong Government-Council link. It is useful, therefore, to look at specific links between the Council and the other spheres of influence set out in the Report.

A. Links with Government

The influence of the Government through ministerial representation and the bias of section 5 have already been dealt with. In themselves they show a strong link with government. The Task Force, not foreseeing these changes from its proposals, also recommended additional links. At the Council level, it recommended the establishment of Cabinet and Officials Committees on Planning "to provide a focal point, at the highest levels of government, for consideration of the planning work which is done, not only under the aegis of the New Zealand Planning Council, but also within government itself."¹⁷ The Cabinet focal point is strengthened by the Minister of National Development sitting on the Council and with the present membership of the Council, the Officials Committee also has direct representation on the Council.

17. The Task Force Report, *op. cit.*, 348.

At the Secretariat level close links with government departments are also recommended. Close liaison between both the Treasury and the Prime Minister's Department is especially recommended, these being the two departments particularly involved with planning — one on the determination of short-term priorities, the other with expenditure of public funds. However, the Report does stress that the Secretariat should not be integrated into either of these departments but should work under the Council.¹⁸ These sentiments were reinforced by the Minister for National Development in introducing the Planning Bill when he cited the existence of the independent Secretariat as one of the advantages the new system will have over the National Development Council structure.¹⁹

One sentence of the Report, in its discussion of the Secretariat, raises an interesting point in the context of the relationship of the Council to Government. It states that the Secretariat should not be integrated either with the Treasury or with the Prime Minister's Department, "but should work independently under the Council, which in turn is responsible to Parliament through the appropriate minister".²⁰ If that is the case there is the strange result of the Minister who is only one member of the Council being responsible for a supposedly independent body of which he is not the Chairman. Even without the Minister's presence in the Council there seems to be a constitutional paradox of an independent body being responsible to Parliament.

B. Links with Parliament

As stated earlier, this area seems to have been largely neglected by the New Zealand Planning Act 1977. The Task Force Report often repeated the desirability of getting bipartisan support for the planning legislation — to be gained to some degree by the absence of political figures on the New Zealand Planning Council. Now that a minister has been appointed to the Council there is a failure to counter balance this by providing a position for a member of the Opposition. The only direct link to Parliament seems to be through the Minister of National Development if he can be held responsible for the Council through an extension of the convention of ministerial responsibility. However this view seems to be negated by the view that the New Zealand Planning Council is an independent body. Section 5 does not provide for any direct access to Parliament as was proposed by the Task Force. Access through the Minister may be blocked by Cabinet pressure. Therefore in its links with Parliament, the New Zealand Planning Council as it now appears, seems to show the greatest divergence from the original Task Force proposals.

At the second reading of the Planning Act 1977 the Opposition attacked the presence of the Minister on the Council, but apart from political barracking the principle of a Planning Council was not itself attacked. Nevertheless, the desired bipartisan support of the Council is less assured by the politicisation of the Council through the presence of the Minister.

C. Links with the Community: Open Government and the Question of Secrecy

As noted earlier, there is little legislative guarantee of public access to the Planning Council, though the practice of the Council seems to be to generate as

18. *Ibid.*, 353.

19. *The Dominion*, Wellington, New Zealand, 20 August 1977, p. 5.

20. *Ibid.*, 353.

much public input as possible by distributing its views and calling for suggestions from relevant sections of the community.²¹ However with the strong governmental influence on the Council, community participation could well be hampered by the long standing governmental convention of secrecy, as the Task Force was well aware:²²

An effective system of consultative planning relies heavily on a free flow of information among participants in the planning process and the widespread publication of the results of planning exercises. One of the important reasons why we have recommended an independent Planning Council is to reduce the obstacles which a council chaired by a minister, and with a dominant governmental component, would face in these respects.

To alleviate this problem the Task Force proposed that: the planning system itself would reduce the need for secrecy by providing Minister and officials with opportunities for frank discussion with the community, and the Council and the Secretariat would ensure public involvement through publicity of its operations.²³

Section 5 provides for government access to the Council, but no guarantee of Council access to the government. Therefore, government departments can deny information to the Council — indeed it appears that the Prime Minister's Department has encountered difficulties of this kind²⁴ and the problem can only be exacerbated for the nominally independent New Zealand Planning Council with its objective of dissemination of information to the public.

As noted earlier there is no real legislative guarantee of public involvement in the Council, and despite the fact that at present the practice is to actively encourage such involvement, it might just as easily change with a change in the personality of the Chairman, or a dominant Minister. If public involvement is lost, the safeguard of public accountability through the media is lost.

V. THE NEW ZEALAND PLANNING ACT

The preceding discussion has pointed out some of the anomalies, and constitutional and political problems to be found in the Planning Council proposals. The New Zealand Planning Act 1977 does not clarify the situation, but rather brings added confusion.

Section 5 sets out to give a list of specific functions for a body that is rather indefinable in concept, as it does not fit neatly into any of the normal advisory body moulds. In fact there is some doubt as to whether it is just an advisory body. The positive aspect of section 5 is that it includes a number of the issues to be considered by the Council which the Task Force saw as its proper sphere of activity, namely social, cultural and economic development. However even on this point there is confusion. Paragraphs (a) and (b) state the order of issues to be dealt with in giving advice and assistance to government as social, economic and cultural. Paragraph (g) provides for the preparing of reports affecting economic, social, and cultural development. Paragraph (e) introduces a new element; it seeks to foster discussion among planning agencies in economic, *environmental*, social and cultural fields. Does this mean that in some instances, the economic

21. See "Letter to sections of community from Planning Council", September 1977, and "A Moment of Truth", Planning Council Letter, August 30, 1977.

22. *Ibid.*, 377-378.

23. *Ibid.*, 382.

24. L. Dovey *The Prime Minister's Department Seminar Paper for LL.M., V.U.W., 1977.*

aspect takes precedence over the social, and that it is only in dealing with planning agencies (as opposed to the government itself or the community or Parliament) that environmental issues are considered? It seems highly unlikely that the word order will be given this significance, but there remains the question why any alteration of the order in the different paragraphs was warranted.

The greatest fault with section 5 is that in seeking to indicate the precise role of the Council, particularly in relation to the Government, there has been a loss of emphasis in its relationship to the other areas that the Task Force saw as vital to the planning process. Perhaps it would be better if the Act did not seek to delineate such specific functions but confined itself to the giving of a sense of direction and purpose to the Council. As the Task Force itself said: "So far as the Planning Council is concerned, we do not see the necessity for detailed legislation".²⁵ The danger with such detailed legislation is that it could be argued that the Council will be confined to the specifics of the wording and will be prevented from dealing with some issues that do not come within the scope of the section. Thus the flexibility of the system and its ability to change as planning priorities change could be lost. Unlike such bodies as the Monetary and Economic Council, the Planning Council does not have functions that lend themselves to precise statutory limits. The functions proposed in the Task Force report are very nebulous, hence some of the confusion as to where the Council fits into our constitutional framework; it is virtually impossible to reduce such concepts to statutory language. Constitutionalists might complain that the Council has too much potential power to be left free of any legislative determination of its functions but as this paper has shown the legislation will exacerbate rather than alleviate that problem.

If an Act causes these additional problems, one is prompted to question the necessity for a statutory basis to the Council at all. It is clear that the New Zealand Planning Council does not need it. New Zealand has a number of advisory and executive bodies that exist quite happily without an Act of Parliament. For example the Commission for the Environment has been given no statutory basis. Furthermore, the Council itself has functioned so far without an Act. One reason for legislation could be to formally announce that New Zealand now has a body responsible for medium term planning. The Council may gain some substance and legitimacy in the public eye if it is surrounded with the symbolic panoply of a parliamentary enactment. Witness the headline to the *Dominion* article reporting the introduction of the Bill to the House of Representatives: "Legislation gives basis for overall planning".²⁶ Mr Gair, also said when introducing the Bill that one of the advantages the Council will have over the National Development Council is a statutory basis which confers greater authority.²⁷ Such authority may only be in the public eye, for this legislation could just as easily limit the authority of the Council.

When it recommended a statutory basis for the Council the Task Force did so for two reasons.²⁸ Firstly "to provide for the independence of the Council and thus for some protection of the term of office of its Chairman and other paid members", and secondly:

25. *Ibid.*, 385.

26. *Idem.*

26. August 20, 1977, p. 5.

28. The Task Force Report, *op. cit.*, 385-386.

to obtain Parliamentary and governmental commitment to the principle of consultative planning and to the general form which the mechanism of planning should take, while leaving room for amendments to the machinery of consultation under the aegis of the Council in the light of evaluation of its performance.

The aim of independence is already under attack because of the change on the question of ministerial representation, and the definition of the Planning Council's functions. In addition there is no clear statement of the principle of independence, unlike the Monetary and Economic Council Act 1961 which contains the preamble:

Whereas it is desirable to establish a Council of persons competent in the fields of economics and finance to make objective and independent reports on the matters hereinafter specified

Bipartisan support has not been evident in the passage of the Act through the House due mainly to the presence of the Minister on the Council. However the principle of a planning mechanism has not been attacked and it is likely that any Labour Government would not change the ministerial representation in view of the 72-75 Labour Government's actions in dismantling the National Development Council bringing it completely under government control. But even if accepted by the Opposition an Act seems of little consequence.

VI. CONCLUSIONS

The conclusions about the New Zealand Planning Council have been made repeatedly throughout this article. It is a potentially powerful body dealing with issues affecting individual and national development. There is uncertainty as to its proper place within our constitutional framework and on the surface at least it is not subject to any direct conventional controls. Like the "fools" in the quote from Pope at the beginning of this article, it is possible that complaint is being made about a system that will be administered well — usurping no power and correcting the balance between the original Task Force proposals and the provisions of the Act. However, if that is the case it will depend on the personalities in Government and on the Council, and the writer is one "fool" not ready to trust that the attitudes of those in the present positions will be constant or will be followed by their successors. Hyperbole aside, Allen's words also quoted at the beginning of the article remind us of the tradition, begun in England, of the fight for clear and responsible forms of government. It may be better to look a little foolish now than be a little sorry later.

AN APPEAL FOR HELP

The Faculty of Law at the University of Papua New Guinea is the centre for legal education and research in the country, and plays a key part in producing the many trained lawyers who are needed at all levels of government and in the many branches of commerce. Modern government cannot function without a substantial cadre of legal graduates who have the expertise to draft and interpret the bills and regulations which are essential to administer the nation. Likewise commercial and industrial activities cannot grow without a pool of legal talent. The Government and the University have recognised the need by setting up the Faculty of Law.

At present this consists of a student body of 200 and a teaching staff of sixteen. It is a very active Faculty, and in addition to the first and higher degrees in law also runs and services External Studies programmes, diploma courses and courses for law Magistrates. It has plans for introducing a number of new teaching courses during the period 1977 to 1981.

However the functioning of the Faculty has been hindered by the inadequacies of the Law Library. Various bodies in different countries who are interested in legal education have laid down standards which a law collection should reach in order that the teaching programmes may function properly. Unfortunately the University's law collection is well below any of the minimum sizes stipulated. The University has given such financial support as it could but the establishment of a working law collection is a heavy investment, especially for a young institution which has many calls on its limited resources.

The Law teachers have recently completed a survey of the holdings in order to identify those areas of weakness, bearing in mind that the present policy is to acquire those legal materials which have most relevance to Papua New Guinea, with special emphasis being placed on P.N.G.'s neighbours and other developing countries. The areas where the collection is still weak are as follows:

- (a) Legal materials from the South Pacific region;
- (b) Legal periodicals and reports together with the monographs written in relation to the laws and customs of the former African Colonies in which there is a mixture of English Common Law and native customs;
- (c) Law reports, periodicals and basic text books and other selected legal materials of other countries whose systems of law are based on the Common Law;
- (d) English, Australian and New Zealand reports and periodicals — the need here is for extra sets of reports rather than a need for filling gaps;
- (e) American materials holdings are very poor and almost non-existent.

To fill in these many gaps would need the purchasing of some 30,000 volumes which is a formidable task for a developing country taking into account the high cost of law books these days. It is for this reason that the help of readers of this journal is being sought. Any assistance will be welcome whether it takes the form of a cash donation, the gift of review copies or unwanted current editions of texts or even sets of law reports from Law Libraries that are being broken up. Help of this kind would be invaluable to a young Law Faculty struggling to produce the lawyers its country needs.

Gifts should be addressed to: Alan Butler, University Librarian, P.O. Box 4819, University Post Office, Port Moresby, Papua New Guinea.

Cheques should be made payable to UPNG, crossed and marked "not negotiable".