



CABINET

CM 88/24/21

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Minister for State Owned Enterprises
Minister of Conservation

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Chief Parliamentary Counsel

MARGINAL STRIPS : EFFECTING THE POLICY

At the meeting on 4 July 1988, when considering the Report of Cabinet Committees for the week ended 30 June 1988, in respect of Section F (Cabinet State Owned Enterprises Committee) item 4, Cabinet amended the decision of the Cabinet Committee recorded in decision 14 of SOE (88) M 20/4 so that the minute now reads:

- 1 agreed that the Conservation Act 1987 and the State Owned Enterprises Act 1986 be amended so that, on all lands of the Crown being disposed of, marginal strips shall exist:
 - a around the seacoast;
 - b around lakes with a surface area greater than eight hectares;
 - c along streams and rivers with an average width greater than three metres;
- 2 agreed that, although the Crown will retain ownership of marginal strips:
 - a the adjoining landowner's title will include the marginal strip land; but
 - b the title will show a statutory exception with regard to the marginal strip land and this will be registered on the title;

- 3 agreed that the statutory exception in (2) above will give the Crown ownership of the strip for the principal reasons of public access, recreation and conservation purposes;
- 4 agreed that the statutory exemption in (2) above will also:
 - a give the Crown *ad medium filum* rights;
 - b stay with the title should the land be on-sold or sub-divided;
 - c ensure that the strip will shift with the river or stream;
- 5 agreed that lands of the Crown in urban areas be exempt from these provisions;
- 6 agreed that marginal strips created under the new legislation will be 20 metres in width;
- 7 agreed that section 24 (4) of the Conservation Act 1987 retain the savings clause to recognise that those parcels of land which are identified as being part of the core assets of the Electricity Corporation are excluded from the provisions of the Conservation Act 1987 for as long as they remain assets of that Corporation;
- 8 agreed that subsections 24 (4)(a), (b) and (c) of the Conservation Act 1987 be replaced with provisions which allow for the disposal of/exemption from the requirements for a marginal strip and disposal of interest in a marginal strip, at the discretion of the Minister of Conservation, by notice in the Gazette, where:
 - a the strip can be shown to have little or no value in terms of conservation and provision of public access;
 - b conservation and public access values pertaining to the strip can, objectively tested, be effectively protected through another mechanism;
 - c current productive uses override the principles of the strips;
- 9 agreed that such disposals in (8) above of all or part of the strips will be noted on the title;
- 10 agreed that existing marginal strips (or their equivalent under the Land Act 1948 and former Land Acts) will be recognised as marginal strips under the new legislation at their current width where this varies from 20 metres;
- 11 agreed that existing legislation be amended to have strips under section 58 of the Land Act 1948 declared to be held for conservation purposes under section 7 of the Conservation Act 1987;
- 12 agreed that the Crown will not dispose of a marginal strip without giving the first option to purchase to the adjoining landowner, or the Electricity Corporation where its core assets abut the land to be disposed of;
- 13 agreed that the legislation will:
 - a provide that managers are to ensure access to marginal strips wherever feasible, subject to the provisions in (15) below, to meet the objectives of public access and recreation;

- b contain a section outlining the objectives of marginal strips as:
- i public access;
 - ii public recreation;
 - iii conservation purposes;
- 14 agreed that the legislation will outline the principles of management of the strips, including the requirement for the Minister of Conservation (or a delegated agent) to discuss the situation with the land manager when investigating a complaint or imposing a requirement or restriction of use, the legislation to include the following principles:
- The adjoining landowner shall be entitled to manage these strips as part of their property subject to:
- a any requirements or restrictions imposed by the Minister of Conservation and notified to the adjoining landowner in writing. (The Minister shall not require the adjoining landowner to undertake any activity not part of his/her normal activities at his/her own expense);
 - b the Minister of Conservation having the right to alienate an interest in the strip under certain circumstances;
 - c any existing improvements to or assets on a marginal strip which are currently the property of the adjoining landowner shall remain the property of that owner. If management and occupation of that marginal strip is resumed by the Crown the adjoining landowner shall have the right of compensation for improvements or fixed assets;
- 15 agreed that subject to the principles referred to in (14) above access to marginal strips will be controlled by the person who manages the strip and such managers may close the strips to the public for operational and/or safety reasons;
- 16 agreed that the legislation will state that where the Minister of Conservation is considering a licence to mine a marginal strip, the land manager must be consulted;
- 17 agreed that the legislation will state that where the titleholder to the marginal strip wishes to grant an easement over the strip, this will only be possible if the Minister of Conservation (or a delegated agent) has given consent;
- 18 agreed that the current status of assets and improvements on marginal strips when the legislation comes into effect will not be affected by the legislation;
- 19 agreed that where significant changes to the management regime, or significant new structures are proposed on the strip, it is a requirement to have regard to the principles and objectives of marginal strips and to consult the Minister of Conservation;
- 20 agreed that where the Crown wishes to resume a strip the titleholder will receive 90 days notice in writing;

- 21 agreed that the Crown will, on resumption of a strip, pay compensation for assets and improvements existing on the strip at that time and pay appropriate administrative costs, except in cases where such assets and improvements were put into place without prior consultation with the Minister of Conservation as specified in (19) above;
- 22 agreed that the legislation will contain provisions for arbitration and valuation on resumption of the strips by the Crown;
- 23 agreed that marginal strips remain exempt from the Fencing Act 1978;
- 24 agreed:
- a that 'maximum control level' in the Conservation Act 1987 be defined as the 'maximum normal operating level'; and
 - b that where a strip is to be retained around a controlled lake or reservoir it should extend 20 metres (wherever possible) or to the maximum flood level, whichever is the greater;
- 25 agreed that the Crown manage the 'marginal strips' around controlled lakes and reservoirs but that any costs which arise as a result of activity relating to electricity generation in the area shall be a charge to the body responsible for that electricity generation;
- 26 noted that the purpose and intent of section 64 of the Conservation Act 1987 needs clarification with regard to the applicability of the marginal strip policy to leases and licences with freeholding rights;
- 27 agreed that the Registrar-General of Lands be consulted on these proposals and assist with the drafting of the new legislation.