PUBLIC LANDS COALITION

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8 September 1989

Committee Secretary,
Planning and Development Select Committee,
Parliament House,
Wellington.

Dear Mr Galvin,

Submission on Conservation Law Reform Bill

The Public Lands Coalition (PLC) is an alliance of three national non government conservation and outdoor recreation organisations. These are the Royal Forest and Bird Protection Society, Federated Mountain Clubs of New Zealand, and the National Council of the New Zealand Acclimatisation Societies.

The PLC functions to advocate common interests in the protection of nature conservation and recreation values on lands of the Crown.

The primary concern of the PLC is that where important public recreation or conservation values exist the Crown should retain ownership of the resource and control of its management. This is to assure full public accountability for management of natural and recreational resources, in accordance with nationally determined policies, and the continuation of the New Zealand tradition of freedom of public access to the outdoors.

Each organisation will be separately submitting its views on the Bill to the Select Committee. Common views within the ambit of the PLC's Charter are represented herein.

Introductory Comments

The PLC welcomes refinement of the Conservation Act, provided that well proven provisions and restraints, many predating the principal Act, are retained and where necessary enhanced.

The Coalition does not welcome 'reform' or change for change sake, particularly if fundamental tenets of the New Zealand outdoor tradition come under attack.

Several aspects of the Bill are cause for grave concern. We ask the Committee to be mindful in its deliberations that the 'bank' of Crown lands/conservation estate is finite and irreplaceable. The 'bank' that is left is the mere residue of a long history of alienation of the Crown's interest over the last 140 years. In contrast, actual and potential threats to the natural values and to public recreational opportunities on these heritage lands is rapidly increasing. The inherent conflict should not be allowed to be resolved by further erosion of our remaining irreplaceable natural assets or by deminishing equality of public access and use by rationing users to only those with the wherewithal to purchase or control these assets. We are sure that the vast majority of New Zealanders, of whatever political persuasion, share our sentiments.

Clause-by-clause Comment

Clause 3 (1) Interpretation

Page 5, Line 30

'Bed' The proposed definition is open to dispute over interpretation of what constitutes "fullest flow (other than when flooded)". It is impossible to define 'flooded' and identify the difference between flooded and fullest flow. A river can not be covering its bed at its fullest flow without being flooded.

WE SUBMIT THAT:

The definition should be amended by deleting the words "fullest flow (other than when flooded)" and replacing with "bank full discharge (other than overland flooding)."

EXPLANATION:

The effect of this is to limit the bed to the space or area of land which the waters of a river or stream cover at its fullest flow without any overland flooding. This could be measured, identified and understood by all and would ensure that adjacent land not part of the river bed could easily be identified.

Page 3, Conservation Act 1987 No. 65

'Foreshore'. The definition of foreshore in the principal Act, ***(****Section 2 (1))* is not a biologically useful definition for the purposes of the Conservation Act as it provides no protection for communities that are dependent upon saline influences but are beyond the reach of ordinary spring tides. Nor does it allow land ownership to be easily identified without expensive and protracted surveys. The PLC considers that the Crown should own all foreshore lands that are characterised by plants or animals that are adapted to living in saline tidal conditions.

WE SUBMIT THAT:

The definition of 'foreshore' as defined in the principal Act be repealed and replaced by:

> "all that area of the coast and its bays and inlets and bed or bank of a river or creek that is intermittently covered by seawater to the inland line of storm waves (but excluding tidal waves and tsunamais)."

EXPLANATION:
This alternative would identify on the ground the landward line of the Department of Conservation's area of responsibility and could be easily identified by drift wood, flora and fauna and on the line and area of periodic sand and gravel displacement.

Page 7
'nature conservation'
WE SUBMIT THAT:
"and landscape" be added to the end of the definition.

Additional definitions sought
'Permit' The PLC considers there is a need for the Department of Conservation to have the option of issuing permits as an alternative to leases and licences and accordingly 'permit' needs to be defined. we recommend:

> "An authorisation of use of conservation areas, stewardship areas, river beds, marginal strips, or walkways for commercial recreation, tourism, grazing, farming, forestry or other purposes that may properly take place on that land, not being incompatible with the management objectives for that land, without confering on the holder—
> (a) The exclusive right to occupy the land to which the permit relates:
> (b) The status of occupier of the land for the purposes of the law relating to trespass.
>
> Every permit shall be issued in such terms and subject to such conditions as to the payment, or non-payment of fees, the periods, degree and manner of use as the Director General may determine, whether generally or in a particular case."
> *[cf S. 66A, 68A Land Act 1948]*

'Protected area' We recommend the following definition:

"Reserves, parks, covenants, walkways, historic places, sanctuaries, refuges, or conservation areas, under the Reserves Act, National Parks Act, Conservation Act, Wildlife Act, Marine Reserves Act, Marine Mammals Protection Act, New Zealand Walkways Act,.Queen Elizabeth the Second National Trust Act, Historic Places Act, and lands held in conservation management agreements or covenants by the Minister or Director-General under any other Act."

Page 10, Line 12
Subclause 6B(1) (d) Functions of Authority
WE SUBMIT THAT:
The word "recreation" be added after "any".

EXPLANATION:
The NZCA should also have powers to investigate and advise the Minister on recreational matters as well as conservation matters. The Authority will have a role in the oversight of recreational planning and management on DOC estate. Composition and functions of Boards must reflect this.

Clause 6M Functions of Boards
Page 15, Line 11
Subclause (d) ii
WE SUBMIT THAT:
After "conservation" the words "or recreation" be added.

EXPLANATION:
The Boards will have an important role in the oversight of recreational planning, and management on DOC estate. Composition and functions of Boards must reflect this.

Page 20, Line 7
Clause 6 Conservation areas may become reserves etc.
WE SUBMIT THAT:
The words “and in like manner amend and revoke any such notice” be deleted from the proposed subsection 8 (1) *(Page 20, Lines 14 and 15)*

EXPLANATION:
The PLC supports the important principle that conservation areas can become reserves and parks however we believe that any revocation should only be in terms of the provisions of the Reserves Act and National Parks Act.

Page 20, Line 37
Clause 8 Conditions on issuing of leases and licences and disposal of conservation areas -
Page 20, Line 40
Subclause 8 (1)
The PLC assumes that the provision for lengthening the terms of leases and licences from 30 years to 60 years is to provide greater security of tenure for financial interests or to increase the sale price of the THC. We cannot see this as good enough reason for lengthening the term . To do so would be at the price of public and conservation interests. We further note that provision for 60 year leases or licences far exceeds the existing Land Act leases, for example, pastoral and special leases under the Land Act which have maximum terms of 33 years—more than sufficient for grazing or other commercial uses.

The PLC believes that grazing and concessions for activities involving no permanent structures should be provided for by permits, rather than leases and licences. The issuing of permits must also be subject to **Subclause 8 (2)** to ensure that permits can only be granted in conformity with a regional management strategy or conservation management plan. We support the provisions of Clause 8 (2).

The PLC believes that all permanent structures be provided by leases and licences of up to 30 year maximum terms.

WE SUBMIT THAT:
Section 14 (1) (b) of the principal Act remain unchanged.

Page 21, Line 15
Subclause 8 (4) (Relating to issuing of leases, licences, or permits in absence of management plans or strategies)
The PLC supports the need for some flexibility to issue leases, licences and permits in the absence of plans and strategies with the proviso that they be subject to public notification procedures under S.49 of the principle Act. We note that this process applies for the creation of easements under Clause 9 of this Bill.

In cases where there has been no public involvement through the formulation and approval of plans and strategies it is vital that the public interest be provided for and that the public is both informed of any proposals to issue permits, leases or licences

and have the chance to comment. A decision as to whether or not significant conservation values will be affected by the granting of a lease or licence or permit is often totally subjective. To ensure conservation values are adequately identified and assessed it is important that the decision is made in the light of best available knowledge. This must include information from the wider public. The Minister and the Department are also open to influence by economic incentives which might prevail over conservation values unless there is public accountability.

Leases, licences, and permits may apply to a wide variety of activities and uses with highly variable environmental or recreational impacts. Many of these impacts may be considerable even over a short term, and because of the unpredictable nature of many commercial initiatives these impacts may not be anticipated beforehand by management plans and strategies.

Leases and licences should only be issued over the immediate area of permanent structures for the purpose of creating financial security for the private owner of such structures. Grants of rights of use of conservation estate for a variety of commercial purposes not involving substantial 'improvements' should be by means of permits. Refer to our earlier comments on Clause 3.

WE SUBMIT THAT:
All leases, licences, and permits be subject to the procedures under Section 49 of the Principal Act, and Clause 8 be amended accordingly.

Page 22, Line 25
Clause 11 Exchanges of conservation areas
The PLC accepts the need for some ability within the principal Act to allow land exchanges that enhance the wider conservation estate. However, certain categories of conservation area should be specifically excluded. These are marginal strips, riverbeds, foreshore, reserves and national parks (provisions under their own Acts should apply), and wilderness areas. All such exchanges should be consistent with conservation management plans and/or regional strategies.
The procedures used under Section 15 Reserves Act 1977 should be paralleled by the Conservation Act provision for the same purpose.

WE SUBMIT THAT:
Clause 11 be amended accordingly..

Page 23, Line 15
Clause 12 Access and use of conservation areas
Page 23, Line 18
The PLC would be totally opposed to the repeal of **subsection 17 (2) of the principal Act** .*(Page 2 , Conservation Amendment Act 1988 No. 131)* without the inclusion of equivalent proposed Section 17A. Subsection 17(2) requires any authorisation under Section 17 to be in consistent with management plans.

A broader concern relates to the Section 17 of the principal Act which allows authorisations, other than leases and licences. A wide range of high-impact developments and uses are allowable under Section 17. For consistency and to ensure that all uses and developments occur within established legal frameworks, we submit that all authorisations be limited to leases, licences, and permits. It appears that Section 17 (as substituted by the Conservation Amendment Act 1988, No. 131) serves

little useful purpose but provides a dangerous avenue for circumventing the planning intent of the Bill and current legislation.

WE SUBMIT THAT:
Section 17 of the principal Act be repealed.

Clause 13 MANAGEMENT PLANNING

General Comment
The PLC is in general satisfied with the intent of the management planning in the Bill but has reservations as to the adequacy of these provisions.

Currently New Zealand's parks, reserves, and former Crown lands, are at most subject to two levels of planning—general policy determined nationally, and management plans for particular areas. A third, middle tier—regional strategies—is now proposed.

General policies contain goals, objectives and policies for implementation/interpretation of the parent legislation. At the local scale management plans further refine general policies as necessary to provide applicable implementation for each situation, plus prescriptions and defined management zones as required. There is usually considerable detail at this level so as to provide day-to-day direction to the administering authority.

The PLC agrees that there is a need for regional planning of natural and recreational resources across the DOC estate, plus the ability to extend planning over private lands with the consent of the owner, and over pastoral leases and licences where necessary. The Protected Natural Areas Programme provides a level of regional planning for nature conservation (apart from species conservation) by identifying Recommended Areas for Protection on the scale of individual ecological districts, but without addressing ownership questions and statutory requirements of management.

The PLC perceives the most pressing need to be regional strategies to provide regional overviews of natural and recreational resources, in particular for the latter. Rapidly expanding commercial recreation and tourism pressures are both impinging on natural values and on recreational opportunities for the general public on a broad scale. For example the whole DOC estate in Otago and Southland has multiple applications for aircraft landings. DOC is faced with making value judgements on what areas, if any, should be excluded from landings in the interests of recreational uses who want some areas of peace and tranquillity for their recreation. A regional strategy covering 'identifiable areas of interest' could, if containing sufficient direction as to where differering discretionary approvals will be given or not given, provide a working document of practical assistance in dealing with these mounting pressures. We are not satisfied that merely providing "objectives" in regional management strategies will achieve any more than general policy. Regional strategies need to be in effect management plans on a broad scale, without the same level of detail that might be necessary for particular areas or localities.

The PLC does not support the necessity for reducing the requirement for management plans for individual parks, major reserves and other protected areas of importance. Proposed amendments to the Reserves Act *(Page 111, Lines 23-28)* allowing for non-review or revocation of existing management plans are most undesirable. Management plans are the only contractual undertaking between administrators and the public that particular areas will be managed in an assured manner. The existence of regional strategies should not be allowed to devalue this crucial function.

Clause-by-clause comment
Page 23, Line 26
Proposed Section 17A Conservation areas to be managed by the Department
WE SUBMIT THAT:
The word the word "recreation" be added after "natural". *(Page 23, Line 28)*

EXPLANATION:
Management of recreational as well as natural resources should be recognised as an objective of management.

The broadening in planning also requires, we believe, a change in planning preparation and procedures for review. As these new policies and plans will be broader in jurisdiction and content it is important that in their compilation the greatest available pool of knowledge is drawn upon. We submit that General Policies and Regional Management Strategies should be prepared in the same manner as National Park Management Plans as provided for in Section 47(1) (a-b) National Parks Act 1980. This requires that before preparing a plan the intent to prepare a plan is publicly notified and the public are invited to submit suggestions for the proposed plan.

WE SUBMIT THAT:
Similar provisions to Section 47 (1) (a-b) National Park Act 1980 be incorporated into proposed Section 17A.

Proposed Section 17B General Policy
Page 23, Line 35
Subsection 17B (1)
WE SUBMIT THAT:
The Authority, not the Minister, should be the approving authority for general policy, subject to giving regard to written advice of Government policy from the Minister. Replace"Minister" with "Authority". *(Page 23, Line 35)*

Page 26, Lines 8 and 9
Proposed Subsection 17B (4) (b)
We support the provision to make minor amendments to the policy as in 17 B (4) (a) without public notification and rights of objection however for all other amendments it is essential that the full public notification and rights of submission procedures as embraced by paragraphs (a) to (m) of subsection 3 of this section are applied.

WE SUBMIT THAT:
In subsection 17 B (4) (b) the words "which shall apply with any necessary modifications" be deleted.

EXPLANATION:
The effect of these words is to allow the Director General to make amendments which materially affect the objectives of the policy or public interest without following all the public notification and submission procedures or amending them as he or she sees fit. This is unacceptable.

Proposed Section 17C General policy under more than one Act
Page 26, Line 13
Subsection 17C(1) Provision must be made for policy for recreational resources, as well as for natural and historic resources.

WE SUBMIT THAT:
The word "recreation" be added after "natural".
Additionally provision needs to made for the Department's role on pastoral leasehold by the addition of "or the Land Act 1948 with the consent of the Minister of Lands," after "the New Zealand Walkways Act 1989."

EXPLANATION:
The Department has a major role in the assessment of natural and recreational values and in giving advice and recommendations on discretionary statutory approvals on pastoral leases. The latter include concessions applications which often overlap with protected areas under DOC's direct jurisdiction. As well, interim ad hoc policies on such topics as burning and grazing limitations within identified RAPs still within leasehold need consistency in their application. There must be provision to allow general policies to overlap both DOC land and pastoral lease as required.

Proposed Section 17D Regional management strategies
Page 26,Line 27
Subsection 17D(1) Again provision should be made for the Department's role on pastoral leases and on private lands with the consent of the owner.

WE SUBMIT THAT:
After "managed by the Department" add "or within Departmental jurisdiction under this or other Acts."

EXPLANATION:
As in 'General Comments on Clause 13.

Page 27, Line 22
Subsection 17D(7) Pastoral leases etc within the jurisdiction of the Department should be brought within the ambit of regional management strategies.

WE SUBMIT THAT:
"or within the jurisdiction of" be added after "managed by."

EXPLANATION:
Same as for 17C (1)

Page 38, Line 15
Clause 15 New sections relating to marginal strips substituted

General Comments
'Marginal' and 'Section 58' strips (The Queen's Chain) are part of New Zealand's heritage, in many instances dating from soon after first colonial settlement. They have functioned as reservations from sale so that permanent Crown ownership would guarantee public access to our lakes, rivers, and coastline. The provision of such strips is one of the most enlightened aspects of our legislation. The presence of such strips over the vast majority of our riparian lands is cause for considerable envy from much

of the western world where history, or lack of similar foresight as our colonial administrators, has seen most such areas in the hands of a privileged minority of private owners. We are convinced that it is of fundamental national importance that no alienation of public ownership or control of these precious areas should ever occur. The very few instances where dispensing with such strips is in fact necessary or desirable can be dealt with by special empowering legislation. Certainly no ability to dispose of marginal strips should be available by administrative action sanctioned under the Conservation Act.

The PLC is of the view that 'marginal strips' have served the New Zealand public very well. The underlying foundation for their existence should not be changed. Only two deficiencies require reform at this time. These are the practical necessity for strips to move with accretion or erosion of banks or shores so that they always exist in reality. We are pleased that such a provision is contained in the Bill.

The second area concerns the purposes for 'marginal strips' which historically have not been spelt out in legislation. The implication of 'public access' purposes has always been present and has never been challenged. It is in the unwritten law of this country. We therefore welcome the inclusion of purposes for marginal strips in the Bill, stating conservation objectives, but believe that the historical purpose of permitting free public access to waterbodies should remain the founding and primary purpose for the strips.

The PLC does not accept the necessity of repealing Section 58 of the Land Act through this Bill. The current reform should apply only to marginal strips on conservation areas. The proposed intent of the new Land Bill in regard to marginal strips has far broader application throughout New Zealand than currently within the DOC estate. For instance the existence of Section 58 strips on pastoral leases is uncertain in many cases. Government has indicated to us that proposed changes within a new Land Act would create future certainty as to the existence of strips on all pastoral leases; a situation that currently does not apply. This matter must be dealt with before contemplating merging the provisions of the two Acts.

WE SUBMIT THAT:
Section 58 of the Land Act 1948 be removed from the ambit of this Bill.

Clause-by-clause comment
Page 38, Line 18
Proposed Section 24 Marginal strips reserved
We are firmly of the view that the founding principle of Section 58 strips— "land reserved from sale or other disposition" *(S. 58 Land Act 1948)*—must be applied to marginal strips subject to the Conservation Act. We feel that it is insufficient to be merely "held ...for conservation purposes" *(Section 2 Conservation Act 1987)* or "to be reserved to the Crown" with only a residual interest reserved in some aspects of land management as proposed by this Bill *(Page 38, Lines 19-20)*

We have had legal opinions which strongly indicate that proposed Sections 24, 24B and 24G in particular amount to a transfer of the Crown's ownership to the holder of the Certificate of Title for the adjoining land. Such a proposition we totally reject in both its desirability and necessity. In effect the Bill proposes retaining marginal strips in name only, retaining little more than very limited rights to intervene in the private management of these newly privatised lands.

WE SUBMIT THAT:
Proposed **Section 24 (1)** *(Page 38, Lines 18-21)* be amended to read— "(1) Upon disposal by the Crown of any land, there shall be deemed to be reserved from sale or other disposition on such land a strip of land not less than 20 metres wide extending along and abutting the landward margin of-...." etc

EXPLANATION:
This provides conformity in terminology with Section 58 Land Act 1948, both in respect to an unambiguous statement of Crown ownership and also the width requirement for marginal strips.

Subsection 24 (1) (b)
WE SUBMIT THAT:
After the word "or"*(Page 38, Line 27)* insert the following :
"if the Minister determines the lake or its landward margin has significant, conservation, natural, recreational, or public access values."

After Subsection 24 (1) (c)
(Page 38, Line 33)
WE SUBMIT THAT :
The words "(not being a canal under the control of the Electricity Corporation of New Zealand for, or as part of any scheme for, the generation of electricity)" be deleted.

EXPLANATION:
Section 24 (1) (c) means that there is no requirement to establish a marginal strip for example along such rivers as the Clutha assuming it does not already have S.58s laid off. The PLC strongly believes that exceptions to the establishment of marginal strips should only apply to the core structures associated with electricity generation. This can be provided by special empowering legislation rather than creating exceptions in the principal Act.

Subsection 24 (2) (b)
Page 38, Lines 41-42
WE SUBMIT THAT:
The words " the maximum operating water level to" be deleted.
EXPLANATION:
The maximum flood level should be the criterion used for lakes, to assure public access around the lakes in all conditions.

Subsection 24 (3)
Page 39, Line 2
WE SUBMIT THAT:
The words "or any other Act" be deleted.
EXPLANATION:
See General Comments on Clause 15.

Page 39, Line 7
Subsection 24 (4) (Relating to assets or improvements)
The word 'improvements' is not defined under the principal Act or in this Bill. We assume that the definition of 'improvements' under the Land Act 1948 *(Land Act 1948, Page 7)* would apply to the Conservation Act. Under the Land Act, *(Section 2)* 'Improvements' includes:

"...substantial improvements of a permanent character...clearing of bush, gorse, broom, sweetbrier, or scrub...in any way improving the character or fertility of the soil..."

This can be interpreted as including, the addition of animal manure through grazing or the application of fertiliser. If the Land Act definition of 'improvements' applies then it is submitted that the presence of such improvements, being in the vast majority of rural and urban situations, will create substantial liabilities on the Crown as well as establishing a private interest in the land. These may severely inhibit the setting aside of marginal strips or result in claims for compensation for the loss of 'improvements' that in most cases have been effected in the past without due authorisation . Additionally the acceptance of private ownership of the 'improvements' may inhibit **c**onservation management of marginal strips.

WE SUBMIT THAT:
The word 'create' replace 'affect' in Subsection 24 (4).

Subsection 24 (5)
Page 39, Line 11
WE SUBMIT THAT:
Subsection 24 (5) be deleted.

EXPLANATION:
The need for marginal strips can be as great, if not greater, in urban situations compared to the more prevalent rural situation. The Crown should be setting a good example for private land owners who are bound by the Local Government Act.

Subsections 24 (7) and (8)
We support these provisions

Subsection 24 (9)
WE SUBMIT THAT:
The words "any enactment" be deleted and replaced by "this enactment alone."

EXPLANATION:
Land Act provisions should be dealt with under the pending Land Act review.

Subsection 24 (10)
WE SUBMIT THAT:
The words "and also includes the grant of a lease or licence under the Land Act 1948" be deleted.

EXPLANATION:
Land Act provisions should be dealt with under the pending Land Act review.

Section 24A
Page 39, line 36
Proposed Section 24 A Purposes of Marginal Strips
The PLC supports the stated purposes for marginal strips. However in recognition of the primary recreational access purpose of these strips:

WE SUBMIT THAT:
Subsection 24A (a) become 24A (c)
Subsection 24A (b) become 24A (a)
Subsection 24A (c) become 24A (b)
WE FURTHER SUBMIT THAT:
Subsection 24A (a) (as drafted) be amended by adding "and nature conservation" after "conservation" *(Page 39, Line 39)*
Subsection 24A (b) (as drafted) be amended by the addition between "water" and "or" of the words "or other lands of the Crown."

EXPLANATION:
As both 'conservation' and nature conservation' are defined in the Bill or principal Act, the distinctions between should be provided for in regard to marginal strips. The change to SS. 24A (b) recognises the important role of marginal strips in providing, in many situations, the only legal access through private lands to public lands beyond the reach of legal roads or walkways.

ADDITIONALLY WE SUBMIT THAT:
The above amended purposes for marginal strips be used in the pending Land Act review for Section 58 Strips.

Page 40, Line 3
Proposed Subsection 24 B Reservation and disposal of marginal strips to be recorded
Section 24B is of major concern to the PLC.

We believe, and existing long experience by officials in the survey and land registration fields would support our view, that there is no necessity to register marginal/Section 58 strips on certificates of title, assuming that Crown ownership is to remain. The notation and signing of survey plans and record sheets by chief surveyors has proved to be sufficient for establishing the existence of such strips and the Crown's ownership of them.

Our view that the intent of Sections 24 and 24B is to transfer ownership of the land is supported by the presence of the phrase "the land so transfered" within subsection 24B (2) *(Page 40, line 14)* As already stated in this submission the PLC rejects entirely both the necessity and desirability of such an intention in this Bill..

The combined effect of the marginal strip provisions in the Bill is to reduce the Crown's interest in marginal strips to no more than a covenant over privatised lands, reserving very limited rights for Crown intervention in the private management of the land. Even if our interpretation is not entirely correct there are too many potential risks to the future security of marginal strips to proceed with this proposal.

WE SUBMIT THAT:
Proposed Section 24B be deleted in its entirety.

Page 40, Line 41
Proposed Section 24C Power to declare land not to be a marginal strip
This conflicts with the very reason for the establishment of marginal strips. Marginal strips by definition never have no value in terms of conservation as they are essential to the maintenance of water quality in the adjacent water course. Therefore this situation will or should never arise. Similarly the PLC does not accept that marginal

strips should be disestablished for greater, often short term economic gains. Neither do we accept that the Minister may declare any land not to be a marginal strip without public notification and rights of submission or without consulting the NZCA or relevant Conservation Board.

WE SUBMIT THAT:
Proposed section 24C be deleted in its entirety.

Page 41, Line 30
Proposed Subsection 24D Disposal of former marginal strips
Given that the PLC does not accept that there is, or should be, any reason to declare land not to be a marginal strip then we submit there is no need to have provision for the disposal of former marginal strips.

WE SUBMIT THAT:
Proposed Section 24D be deleted.

Page 42, Line 9
Proposed Subsection 24E Right of Crown to half of bed of river adjoining former marginal strip
The PLC would support this subsection if we believed in the need for the disposal of marginal strips. Without any disposals there is no need for this subsection.

WE SUBMIT THAT:
Subsection 24E be deleted.

Page 42, Line 16
Proposed Section 24F Effect of change of boundary of marginal strips
The intentions behind this provision are most welcome. If implemented the age-old problems arising from river and shorelines shifting, but not the marginal strips, would be overcome. This would ensure, in most cases, continuation of guaranteed public access whatever nature does to the margins of active water bodies.

Clause-by-clause comment
Page 42, Line 27
Subsection 24F (3)
WE SUBMIT THAT:
Subsection 24F (3) be deleted.
EXPLANATION:
If the provisions of this Bill are confined to the Conservation Act alone, with retention of Crown ownership of marginal strips, then this provision is unnecessary.

Page 42, Line 40
Subsection 24F(5)
This subsection is problematical as if 'improvements' are as defined under the Land Act this may mean that marginal strips cannot be altered to new positions when river or lake margins change. Most land in New Zealand is subject to improvements either through clearing of bush etc or improving the character or fertility of the soil. We feel that the Committee should address the matter of entitlement to compensation for loss of improvements in this situation.
(Note: We draw a distinction between entitlements to compensation for loss of improvements on established marginal strips, and strips that 'encroach' on to private

land through shifting banks or shorelines. In the former the use of a strip by an adjacent landowner is equivalent to informal grazing or cropping on a road reserve. There is no right of use and no possible entitlement to compensation for loss of use or improvements if the County decides to widen the road formation etc..)

WE SUBMIT THAT:
Subsection 24F (5) be deleted.

Page 43, Line 5
Subsection 24F(7)
If the Bill confines itself to marginal strips under the principal Act then there is no need for this subsection as it relates to strips reserved from sale under the Land Act. In respect to existing Conservation Act strips.this subsection misses the opportunity to apply moving marginal strips retrospectively. The PLC believes the rewriting of the marginal strip legislation provides an excellent opportunity to correct a significant anomaly. We consider that such a retrospective application is confiscatory only in the purely legal sense as it need make no practical difference to the adjacent land owners use of the land.

WE SUBMIT THAT:
The words "Nothing in" be deleted from subsection 24F (7). This would then apply to our amended section 24 (3).

Page 43, Line 7
Proposed Section 24G Management of marginal strips
General Comments
The PLC believes that there is no necessity to vest management of marginal strips with anyone other the Crown.

The vast majority of marginal/Section 58 strips do not require any formal management. They have 'sat' passively on survey documents, as part of the Crown's wider responsibilities to provide a guaranteed land record system, and have been informally used in most situations by the adjoining farmer.

The PLC accepts that farmers have in effect acted as unofficial managers for themselves and the Crown but this has been at little inconvenience or financial liability. Whatever costs have been incurred are in our view more than offset by generations of rent-free use of the land. We believe that the Crown should consult adjoining landowners over any Crown initiated changes to the use of marginal strips as these can have a direct bearing on the use of the former's land. More often however it is the landward uses that have a greater impact on riparian values, particularly on water quality, bank stability, wildlife and fisheries values. We feel that there should be a legal obligation on adjoining landowners to seek prior approval from the Crown for any changes of land use that may encroach on to marginal strips. The proposals in the Bill reverse the balance of interests by permitting, as of right, the making of 'improvements' by the manager, which conflicts with the conservation and unrestricted public access purposes of the strips. This is at odds with Government's general legislative push for sounder resource management practices.

The PLC accepts that marginal strips may continue to be used for grazing by adjacent landowners except where this use is detrimental to the conservation, nature conservation, recreation, or historic values of the strip. We believe that grazing is best provided for by continuation of the present informal system, or alternatively by

permits as we propose under Section 8, and that the rights of use would include responsibility for pest and weed control. Such permits would not establish exclusive occupancy and would require the Director-General's authorisation for any soil disturbance or burning, as under the existing Pastoral Lease provisions *(Sections 106 and 108 of the Land Act.1948.)* However we do not seek a whole new bureaucracy to authorise use of marginal strips. We merely raise a simple means of authorisation if such is required for individual situations.

Any official approvals issued in connection with the use of a marginal strip must have regard to advice from the relevant Conservation Board and Fish and Game Council who may refer it to the NZ Conservation Authority or National Council as the case may be for them to consider. Authorisations which relate to the establishment of permanent structures should be subject to public notification and submission procedures.

The effect of Section 24G is to convert existing informal occupation of marginal strips by an adjacent landowner from a privilege to a legal right. This poses all sorts of problems to the ordinary laws of ownership as it is not certain what rights a manager has if s/he has legal ownership. Normally managers would have no legal interest in the land. If management is given to other than the adjacent land owner are they trespassing over someone else's land?

We have further objections to the vesting of management in non Crown hands due to:
(a) A huge administrative burden being created by the necessity of recording managers and dealing with applications for rights of management and policing the management of strips. This would cause precious monies to be diverted from truly important functions of the Department. This is a luxury that cannot be afforded.

(b) Little burden falls on the Crown now. In the very few situations where active management is required for conservation reasons, this liability is insignificant compared to other categories of conservation area within the jurisdiction of the Department.

(c) Almost all the Crown's function as the representative and upholder of the common interest is transferred to private hands that may be, or perceive to be, adversely affected by the existence of 'marginal strips'. Despite the Crown attempting to reserve the right to intervene in the management of strips, the reality will become that uncertainty of rights of access will be created in the minds of the public at large. This will undermine the original purpose of marginal strips as a whole by removing the certainty of public access to our coastlines, rivers and lakes. We believe the element of uncertainty that will be created by this Bill will severely negate the purpose of the strips.

WE SUBMIT THAT:
Section 24G be deleted in its entirety.

Clause-by-clause comment
Subsection 24G (1)
(Page 43, Line 9
There is no definition of 'suitable person'. This leaves open the possibility of a camp ground or hotel resort owner or farmer being appointed to manage, which could have a considerable impact on the nature of public activities on the marginal strip . Although **paragraph 24G(4) (b)** *(Page 43, Line 24)* requires the manager to provide public access along the strip this does not ensure "free" access (ie without payment of an admission or use fee). Strong commercial incentives could be created as a direct

result of the manager's use, or subletting of the strips or adjoining land, for charging the public fees.
There may also be legal problems with section 24G (1) as it is not clear what legal rights an appointed manager will have, either if s/he has title to the marginal strip or is not the adjacent owner.

Subsection 24G (2)
Page 43, Line 10
A very dangerous provision providing the automatic right to manage to lie with the adjoining land owner, irrespective of the merits of the individual or the nature of encroachment on conservation and recreation values that such appointments will cause.

Subsection 24G (4)
Page 43, Line 15
We believe that it can only be a Crown responsibility to manage marginal strips in a way that best serves the purposes of Section 24A. There is an inherent conflict of interest between affected private interest and the broader public interest.

Subsection 24G(5) (a)
(Page 43, Line 27)
In our view, this completely negates the purposes for which marginal strips are held under Section 24A and conflicts with 24G (4) (a). For example the maintenance of water quality in the adjacent waterbody requires that no cultivation or harvesting of trees occurs within 20 metres of that waterbody. Any ground disturbance in the riparian strip usually results in an increase in sediment reaching the water body. This provision essentially allows unrestrained encroachment on to what should remain public land in the fullest sense.
The Manager's rights to make improvements are unclear. Subsection 24G (5) (a) lists the specific activities the manager may undertake and does not require Ministerial authorisations. Subsection 24G (9) (a) only requires the Manager to consult the Minister before making significant changes. However it is unclear whether the definition of significant changes includes those listed in subsection 24G (5) (a). Subsection 24G (5) can be read as allowing the Manager to carry out the listed improvements without consulting the Minister.

Subsection 24G(5) (b)
Page 43, Lines 30
Since their inception marginal strips have been open to the public at all times of the year and there have been no restrictions on the means of use. Accompaniment by animals such as dogs (with appropriate hydatids treatment certificates) is often an integral part of hunting recreation. We are aware of few problems for instance during the duck shooting season. Trespass and stock worrying on adjoining lands have other legal remedies available. It is ironical that the owner of domestic animals present on marginal strips, usually year-round, should be given the right to exclude other animals. It has to kept in mind that domestic stock could be severely impacting on riparian and waterway values. This provision denigrates from the concept of free, unrestrained public access.

Subsection 24G(5) (c)
Page 43, Lines 32
"Operational or safety reasons" for a manager closing a strip to the public, even with a requirement to give the Director-General prior notice *(Subsection 24G (9) (b))*, can be readily fudged in terms of this Bill to unreasonably bar the public. For instance with stock present either on the strip or on adjoining land, the risk of stock

disturbance could be used as an 'operational' reason for 'temporary' closures of considerable duration. Similarly fire risk may be another pretext for closure. Our key objection is that judgement of these matters is placed in the hands of a party not primarily concerned with maintaining public access—quite the reverse. We have little faith in official agencies upholding the public interest in such cases. Our experience is that, even when cases are clear-cut, it is only with extreme reluctance that officials will intervene. Uncertain rights for DOC on the proposed 'marginal strips' created by this Bill will create a DOC-landowner relationship that will probably be characterised by the recreational purposes of the 'strips' being sacrificed as the price of obtaining owner consent for conservation actions.

Subsection 24G(6)

Page 43, Line 34

The PLC believes the the Minister may find himself powerless, before the Courts, to impose further requirements or restrictions on the use of 'marginal strips' by a manager. As we contend that ownership of 'strips' will be transferred under the provisions of this Bill, in the absence of more specific management requirements for each strip at the time of ascent for the new Act, no later encumbrances on the title may be lawfully imposed by the Crown.

The Bill provides no remedies or penalties for non-compliance with requirements by the Minister other than the politically unlikely step of resumption of management.

Subsection 24G(7)

Page 43, Line 43

The PLC agrees with the intent of not imposing fencing costs on adjoining owners. Only the party requiring fencing along the marginal strip/adjoining land boundary should be liable for costs. For the marginal strip situation we submit that the requirements of the Fencing Act stipulating 50:50 sharing of costs be deleted.

We do not perceive a general need for fencing of marginal strips. Where there are pressing conservation reasons for doing so costs should lie solely with the Crown.

It should be noted that the comments above apply to the existing situation of separate, adjoining titles. We reject the notion of merging titles and transfering ownership away from the Crown.

Subsections 24G(8) and (9)

Page 44, Lines 3-17

As the PLC rejects the necessity and desirability of passing management control away from the Crown, deletion of such empowering provisions removes the necessity of subsections 24G (8) and (9).

Page 44, Line 21

Proposed Section 24H Easements over marginal strips

This section should be consequentially deleted in light of the suggest amendments above.

In any event the PLC considers that the creation of an easement over a marginal strip should be subject to public notification and submission procedures.

WE SUBMIT THAT:

Section 24H be deleted.

Page 44, Line 27

Proposed Section 24 I Resumption of marginal strips by Crown

This provision is not needed if our submissions on retaining Crown management of marginal strips are accepted.

WE SUBMIT THAT:
Section 24I be deleted.

Clause 22 General offences
Page 65, Line 4
WE SUBMIT THAT:
The words “lease, licence, permit” be added after ‘notice’.

Page 72, Line 20
Clause 28 Powers of Director-General
A new provision needs to be added to Section 53 of the principal Act requiring all powers of the Director-General to be exercised in accordance with General Policies, Regional Management Strategies, and Conservation Management Plans, where they exist or are applicable.

Page 73, Line 9
Clause 29 Delegation of powers by Minister
The PLC welcomes the extension of the ability to delegate powers to the Conservation Authority and Conservation Boards

Clause 40 Interpretation (N Z Walkways)
Page 78, Line 31
WE SUBMIT THAT:
An additional paragraph be added:
“(d) This definition shall apply for the purposes of this Act alone.”

Yours sincerely,

Bruce Mason
and Sue Maturin
On behalf of the Public Lands Coalition.