RESOURCE MANAGEMENT BILL

PROVISIONS AFFECTING PUBLIC ACCESS TO THE COUNTRYSIDE AS AMENDED BY FINAL REVIEW GROUP REPORT

Commentary by—Bruce Mason, PLC Researcher, 26 February 1991.

Clause 3(2)(c). Act to bind the Crown.
The proposed removal of exemption (via Minister of Conservation's certification) of marginal strips from the provisions of the RM Bill is a disaster. The review committee has provided no justification for this loss of protection.

The change assumes less conservation status and value than on other 'Conservation Areas' and ignores the fact that they are designated as 'Specially Protected Areas' under the Conservation Act, and that the purposes of marginal strips were recently broadened in recognition of their major conservation role (cf Conservation Law Reform Act .1990).

There can be no justification for treating marginal strips in any different manner from other conservation lands. What the review team is saying is that marginal strips, contrary to what the Conservation Act says, do not have "intrinsic values" warranting the Minister of Conservation's powers of protection. This is utter hogwash.

Clause 5A. Matters of national importance.
The retention of former clause 5(1)(h) as new Clause 5A(d) is most welcome. The minor amendment recommended by the Review team is of no consequence. It now reads—

> "The maintenance and enhancement of public access to and along **(***the public estate, including* **)** the coastal marine area, lakes and rivers."

I leave it to ARM to judge the priority of clause 5A relative to Clause 4.

Clause 7. Restrictions on use of land.
Entry or passage across the bed of a river or lake is a restricted use under clause 7. As a matter of principle mere entry should be a right. The review team has not addressed this matter.

Clause 27(1)(g) and (h). Functions of regional councils under this Act.
Regional council control of actions on the surface of rivers and lakes and the occupation of space on foreshore and seabed are matters that need further attention to ensure that public access are not needlessly restricted. I am very wary of control of these matters being outside of direct central government control.

Clause 27 (3). Functions of regional councils
My comments on clause 3(2)(c) apply. re removal of Minister of Conservation's jurisdiction over marginal strips. Why should marginal strips be singled out of the whole conservation estate for regional council control?

Clause 60A—Rules about esplanade reserves on reclamation and Clause 66A—Rules about esplanade reserves on subdivision and road stopping,
and consequential amendments to 2nd Schedule, Part II, clause 5.
These new provisions remain the worst aspects of the the Bill in relation to esplanade reserves.

They will allow district councils to establish their own rules for the reduction in width (from a standard “not less than 20 metres”) and to waive any requirement to establish reserves in place of unwanted roads along shorelines. This replaces existing Local Government Act minimum prescriptions and the Minister of Conservation’s power of veto over local government decisions which unduly impact on the public interest.

The major problem with clause 66A is that recreational and conservation values of all roads along water margins, and all private lands without ‘Queen’s Chains' that are capable of subdivision will have to be assessed at the time that district plans and rules are prepared. This will be a huge if not impossible task.

It would be better, and safer, to continue to deal with situations on an ad hoc basis as applications for subdivision arise. This would allow time for proper assessment

The review group’s changes make a bad provision worse by opening the door for more exemptions to the creation of esplanade reserves. The addition of undefined “circumstances” that regional councils can consider as relevant for not creating these reserves is a developer’s dream come true. Their wish to provide ‘more flexibility’ for exemptions to accommodate ‘minor’ subdivision boundary adjustments has been expressed without restraint. Councils and developers are always looking for ways of removing disincentives for development —this change will do just that. The best protection for esplanade reserve establishment are contained in the present Local Government Act. If these cannot be exhumed at this late stage, perhaps trying to severely constrain the ‘circumstances’ may be the next best approach.

Clause 103. Consents not real or personal property.
The power for the holder of resource consents over coastal marine areas to exclude all other persons needs to be reviewed. The review team has not addressed this matter.

Clauses 188 to 194. Esplanade reserves.
The select committee changes to these provisions resulted in marked improvements to the Bill. These do not require further review. The review team have not changed these. The major problem with the Bill in relation to esplanade reserves generally is the broad discretions created for not creating them in the first place, as discussed above.

FORTH SCHEDULE:
Coal Mines Act 1979 No 21.
It is unclear if Crown ownership over the beds of navigable rivers would remain with repeal of Section 26. This requires review to ensure that future disputes over Crown ownership cannot arise. The review team has not addressed this matter.

SIXTH SCHEDULE:
Local Government Act 1974 No 66:
New clause 345(4). The consent of the Minister of Conservation to reductions in width of esplanade reserves should still be required.

Perhaps in the public arena ARM should address these changes to marginal strips and esplanade reserves as further wholesale Government attacks on the ‘Queen’s Chain’, little different in intent from that of the unpopular moves of the last government.