RESOURCE MANAGEMENT BILL

TO: Kevin Smith, Hugh Barr, Niall Watson.

Commentary by—Bruce Mason, PLC Researcher, 11 March 1991.
On Ministerial and other responses to PLC/FMC criticism of
Review Group's Recommendations for Marginal Strips.

Note: These comments are limited to marginal Strips under the Conservation Act. Concerns raised about Esplanade Reserves still apply.

In summary the responses have been—
1. Control will remain with the Minister of Conservation.

2. All actions on marginal strips will *continue* to be subject to local authority controls *as they are at the moment* under the Town and Country Planning Act.

3. There will be no further weakening of protection for marginal strips under the regime recommended by the review Group.

As I outlined in my commentary of 26 February, marginal strips are 'specially protected areas' under the Conservation Act, with their conservation status being greatly enhanced by the Conservation Law Reform Act of last year.

They are now, for unexplained reasons, being differentiated from the rest of the conservation estate for duel control (regional councils/DOC) over their management. The only rational I can find for this is contained in the Review Group's report (page 99)— "...the review group considers that marginal strips held under the Conservation Act *by reason of the disposal of Crown land*, should not be exempt from the Bill..." and "although not strictly within the terms of reference, the review group has some concerns about the exclusion of land held under the Conservation Act from the operation of the Bill."

The exemption from the provisions of the RM Act proposed by the Select Committee was for—
"3(c) Any work or activity—
(i) Where the Minister of Conservation certifies that the work or activity is necessary for, or incidental to, maintaining the intrinsic values of the land which is held or managed under the Conservation Act 1987 or

any other Act specified in the First Schedule to that Act other than for administrative purposes; o

(ii) Conforms to a management plan that has been established under the Conservation Act 1987 or any other Act specified in the First Schedule to that Act."

I am unaware of any objections to land held by DOC for administrative purposes not being exempt from the RM Act.

The review group proposes deleting clause 3(2)c and replacing with—
"Any work or activity within the boundaries of any area of land held or managed under the Conservation Act 1987 or any other Act specified in the First Schedule to that Act (other than land held for administrative purposes or any marginal strip within the meaning of section 2(1) of the Conservation Act 1987) where—
(i) The Minister of Conservation certifies that the work or activity is necessary for, or incidental to, maintaining the intrinsic values of the land; or
(ii) The work or activity conforms to a management plan that has been established under the Conservation Act 1987 or any other Act specified in the First Schedule to that Act."

After reading section 24C of the Conservation Law Reform Act 1990, the purposes of marginal strips, it would be very difficult to conclude that marginal strips do not have intrinsic conservation and recreation values indistinguishable from other conservation areas that the review team is apparently happy to leave within the sole jurisdiction of the Minister of Conservation. In fact, due to the importance of water margins as rich ecosystems, as wildlife habitats, and their importance for the regulation of downstream water quality it could easily be argued that the conservation value of marginal strips is greater than many other conservation lands. It is presumable that for these reasons the purposes of marginal strips was broadened last year to include a strong conservation emphasis in addition to their important public access/recreation role.

The review group's seems to be confused as to what constitutes marginal strip by their reference to "the disposal of Crown land", presumably meaning what they think is the sole mechanism by which marginal strips are established. Marginal strip means "any land held" under the Conservation Act 1987 for conservation purposes (Section 2(1), irrespective of the mechanism by which they became held by DOC. This includes areas retained in Crown ownership when Crown land is disposed of, plus all applicable water margins within other conservation areas that have never been subject to disposal of the Crown's interest; the latter category obviously being very substantial.

It is implicit in the review group's statement that somehow areas of Crown land along river banks, lake shores and sea coast that DOC either inherited via decades of application of successive Land Acts or during SOE establishment are scrappy bits of land that do not have intrinsic values warranting similar managment to other conservation areas. From the foregoing this is clearly nonsense. Their assumptions also ignore all the marginal strips that are deemed to exist within other conservation areas held under the Conservation Act.

In regard to the argument that all actions on marginal strips will *continue* to be subject to local authority controls *as they are at the moment* under the Town and Country Planning Act, this is based on an erroneous assertion. Normal management (protection of intrinsic values) of marginal strips are *not* currently subject to planning control under the T&C Planning Act. The *establishment* of them may be if 'reserves' are not predominant uses within district planning schemes. My enquires have revealed that only one district scheme in NZ (Silverpeaks) does not provide for the establishment of 'reserves' such as marginal strips as a predominant use. In this case, and this case alone as far as I know, local authority consent is required for the *establishment* of marginal strips but no consents are required for subsequent *management* in conformity with the Conservation Act. The only T&C Planning Act controls currently applicable to marginal strips are works such as buildings that are not predominant uses within a district scheme or other works that are additional to a designated public work. Designated public works only require an outline of the works to be presented to Councils, rather than consents being obtained.

Past and present practices all around the country has been that marginal strips have been treated as 'reserves' and provided management of them has been in conformity with their objectives, no 'external' consents have been necessary.

In regard to the applicability of management plans over marginal strips, all in future will be covered by conservation management strategies prepared under the Conservation Act. They will have no less conservation management than any other areas held by DOC. This must be an improvement in (a) public involvement in marginal strip management, and (b) improved management itself.

The alternative recommended by the review team of overriding management control by regional councils is an unnecessary and dangerous encumbrance. It is merely the thin end of the wedge in breaking up the conservation estate, with no better provisions for enhanced conservation management. The reverse is the most likely result if anything is to be

learnt from past and present local control over nationally important resources The determination with which the Minister of Local Government has embarked on the abolition of regional councils means that reference to such in the RM Bill should be substituted by ‘district council’.

I recommend that the changes recommended by the review team be strongly resisted.
ie. the select committee’s version be retained.

B J MASON