PUBLIC LANDS COALITION

Federated Mountain Clubs
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5 December 1989.

Hon. Philip Woollaston,
Minister of Conservation,
Parliament Buildings,
Wellington.

Dear Philip,

CONSERVATION LAW REFORM BILL
CLAUSE 15 — MARGINAL STRIPS

The PLC would like to thank you for meeting with us to discuss the marginal strips provisions of the Conservation Law Reform Bill. As you will appreciate the maintenance of marginal strips for conservation purposes, and the protection of the public's right of access to them for recreational purposes, is a fundamental aim of the PLC.

This letter summarises progress made at our two meetings including indentification of areas where a large measure of agreement was reached, and areas where the PLC has concerns. We have listed these matters under general headings

The Public Lands Coalition also welcomes the Prime Minister's public statement of 28 November indicating that Government has no intention of restricting public access to the Queen's Chain, and that it will amend the Bill accordingly. From our point of view it would be most useful if we were able to be consulted over the proposed wording of the amendments to the Bill.

PUBLIC ACCESS RIGHTS

We understand the Prime Minister's statement to mean that the status quo for Section 58 strips will remain. ie. There will be no powers of closure by either the Minister, or by managers or any other party, for any reason. The PLC supports the concept of there being no powers of closure, but we note this would require change to Section 13 of the Conservation Act 1987 to exclude marginal strips from this provision.

CROWN OWNERSHIP

We take from the Prime Minister's statement, and our discussions with you, that any doubts as to full Crown ownership will be removed from the Bill. We therefore recommend the inclusion of the phrase "reserved from sale or other disposition" in new SS 24 (1) and (2).

WAIVERING OF STRIP ESTABLISHMENT

Our discussions lead us to believe that you contemplate waiverings will occur only at the time of disposal of Crown lands to SOEs etc, "consistent with S 24A". We would like your confirmation that this means that the purposes of S 24A would not be served by the establishment of a strip.

However our view is that no general ability to waiver the establishment of strips should be provided for in the Bill. No such need was anticipated when the SOEs were set up in 1986. In fact Section 58 of the Land Act was to apply, without exemption, as indicated by Section 24 (2) (b).State-owned Enterprises Act 1986.

The Bill currently proposes removing the current discretion of establishing Section 58 strips along rivers and streams (Section 58 (1) (c) Land Act). This discretion first arose in 1948, and has rarely if ever been used. We support its removal. We further contend that no discretions should be available to the establishment of marginal strips. We are aware of only three instances since 1963 of Governments overriding the necessity of establishing Section 58 strips, by using Reserves and Other Lands Disposal Acts. If waivering of marginal strips is to be the exception rather than the rule the necessity of having to pass special legislation should be maintained.

WIDTH OF STRIPS

We understand from you that strips wider than 20 metres will be created by means of reserves. Specific provision will need to be made in new Section 24 for the creation of reserves under the Reserves Act. We suggest 'esplanade reserve' classification.

The present definition of 'marginal strip' in Section 3 of the Act ("...within 20 metres...) does not allow strips wider than 20 metres. As a significant number of existing strips will retain widths greater than 20 metres in terms of new Section 24 (3), allowance for these should be made in the Act's definition.

The current definition in the Act would allow reductions in width. Since the Bill's introduction we have not detected any intent on behalf of Government to reduce width after establishment. Certainly the reduction in width provision in the Land Act has rarely been used. We propose removing any ability to reduce the width of established strips. An express prohibition in the Bill or amendment to the definition in Section 3 of the Act is required.

If an ability to reduce width carries through to the new Act, the introduction of public notice and objection procedures, by way of Section 49 of the Act, should apply. This would be an improvement on the present situation.

MOVABLE STRIPS

Current provisions are confined to new strips, yet to be established. Special provision should be made in the Bill for disposals/land exchanges for purposes of strip movement for existing strips. This should be for the sole purpose of creating new strips of the same width along changed shorelines or banks. This would go some way towards correcting many existing problems of practical legal access having being lost through erosion. Specific provision in the Bill for exchanges of accreted Crown lands for private land, possibly with incentives, would greatly extend the very laudable notion of movable strips contained in the Bill.

CARRYING OVER OF FUNCTIONS OF SECTION 58 LAND ACT

We are pleased that it is your intention that all the strip establishment functions of Section 58 are carried across into the Conservation Act. It is critically important that unsurveyed Crown lands without Section 58 strips will end up having marginal strips when they qualify for such under new Section 24. We are concerned that new Section 24 (3) and (10) may not be adequate to achieve this purpose.

We are also concerned that new Section 24 (3), by confining itself to lands "reserved from sale or other disposal" may not capture all the strips that are commonly regarded as Section 58 strips. This is because the sole record of their existence, on certified plans, is often 'Crown Land', without reference to Section 58, the Land Act, or any reservation from sale. We suggest that the wording of new Section 24(3) be amended to include all Crown lands adjacent to waterways.

RECORDING ON CERTIFICATES OF TITLE

We understand from you that only limited certificates of title will be issued for new strips. We assume that all existing surveyed strips will remain as such, without incorporation into adjoining titles. Please confirm that it is only for new strips that the CT mechanism will be used, and existing plan records will remain.

An area of concern with using CTs is that under the Land Transfer Act 1952 there are statutory obligations on District Land Registrars to issue ordinary titles at any time when "sufficiently defined...by a deposited plan". The SOE lands are all being surveyed to the standard necessary for acceptance as deposited plans and the issue of ordinary titles. Without amendment to the Land Transfer Act (Sections 190, 195 in particular) limited certificates of title must be replaced by ordinary titles, thereby defeating the movable strip intent of the Bill. To make it work, it appears that specific prohibition on the issue of ordinary titles will be necessary. This may be acceptable for SOE lands, while they remain state-owned, however market distortions will arise on future sale of these lands in comparison with other private lands. This is certain to create future pressures for the removal of the insecurity of limited title and with it the automatic movability of strips.

We feel that Government should reevaluate the CT approach for recording marginal strips in view of the above and the actuality that survey is intended for SOE lands and riverbeds in any case. Therefore little extra expense will be incurred in defining strips on certified plans at the same time.

As already stated we strongly support the concept of movable strips, however we suspect that the mechanism in the Bill is flawed. We suggest that Government review possible options for making all Queen's chains movable, under all statutes, to find a workable alternative.

RECORDING ON CERTIFIED PLANS ETC

We understand that it is your intention that movable strips will be recorded on certified plans and cadastrals, in addition to on titles. We see full public record of all strips on certified plans/cadastral maps as an essential element of public accessibility to their rights and the strips themselves.

The Bill should therefore be amended to require all marginal strips to be recorded on certified plans and other records prepared by Chief Surveyors. To this end new Section 24B needs to be amended, with subsection (5) deleted.

DISPOSALS

We understand that it is your intention to remove disposal provisions (S 24C and 24D) from the Bill. The only disposals permitted will be for the purpose of exchange and the creation of new, replacement marginal strips. This we fully support.

EASEMENTS

We fully concur with your view that only the Minister should have power to grant easements, with regard being given to Section 24A. Therefore new SS 24H (1) will be deleted. Care needs to be taken in the new wording for S 24H to ensure that easements are not contrary to S 24A.

IMPROVED MANAGEMENT OF STRIPS

We have further considered the whole matter of the necessity of appointing managers, other than DOC, over marginal strips, and measures to improve management of these lands and adjacent waters.

The provision for the first time of comprehensive purposes for marginal strips (Section 24A), provides substantial management guidance. This is a major advance. The purposes in Section 24A could be expanded if necessary into detailed national policies, or used as the underlying principles for individual management plans. In view of this advance, the major administrative burden on DOC administering potentially tens of thousands of managers, and the risks associated with private use and control, we consider that appointment of managers should be dropped from the Bill.

In regard to existing potential costs to the Crown we note that you will consider weed control responsibility becoming the responsibility of the adjoining occupier. Fire control responsibility could be removed from state jurisdiction by amending the Forests and Rural Fires Act to exclude marginal strips and their 1.5 kilometre safety margins as 'state areas.' Realistically these measures cannot be portrayed as an undue burden on the private sector as adjoining legal roads are currently treated in like manner.

Recognition should be made of the fact that most existing strips are informally used by adjoining land occupiers, generally for grazing. Other users, particularly squatters, erect batches etc.—this being a significant problem in some localities. Remedies for trespass on Crown Lands are within the Land Act but have not been carried over into the Bill. We suggest that you introduce penalties for any one who obstructs or bars public access, occupies, or harms the conservation value of a particular strip. We suggest that Section 39 of the Conservation Act be amended to make such behaviour an offence. Then penalties under Section 44 could be applied.

Again thank you for the opportunity to meet and discuss this important matter. Please advise if you require any clarification or expansion of points raised in this letter.

Yours faithfully,

Niall Watson
On behalf of
Public Lands Coalition