

RESOURCE MANAGEMENT BILL 1989

PROVISIONS AFFECTING THE QUEEN'S CHAIN AND PUBLIC RECREATION OVER RIVER, LAKE, AND SEA BED

[Page No.in Bill]

[Pages 19-20]

Clause 7. Restrictions on use of land.

“(1) No person may use any land (including the bed of a navigable water body) in a district in a manner that contravenes a rule of a plan or proposed plan unless the use is—

(a) Expressly allowed by a resource consent; or

(b) An existing use allowed by **section 8**.

(4) In this section and in section 8, the word “use” in relation to any land (including the bed of any water body), means—

(f) In the case of a bed of a water body—

(ii) Any entry onto or passage across the bed, or on or across any water over the bed, by any person, animal, vehicle, or craft.”

[Pages 21-22]

Coastal Marine Area

Clause. 10. Restrictions on use of coastal marine area—

“(2) Without limiting subsection (1), no person may use any coastal marine area, or any natural or physical resources associated with any coastal marine area, in a manner that contravenes a rule of a regional coastal plan or a proposed regional coastal plan unless the use is expressly allowed by a resource consent. “

[Pages 28-30]

Clause 27. Functions of regional councils under this Act.

“Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:

(c) The control of the use of the land for the purpose of—

(1) Soil conservation and its effect on the maintenance and enhancement of the quality of the water in water bodies and coastal water:

(ii) The avoidance or mitigation of natural hazards:

(iii) The prevention or mitigation of any adverse effects of the storage, use, or disposal of hazardous substances:”

“(d) In respect of any coastal marine area in the region and for the purpose of maintaining the natural character of the area while allowing for its use and development where appropriate, the control (in conjunction with the Minister of Conservation) of—

(i) Land and associated natural and physical resources (other than the allocation, conservation, and management of fish stocks controlled under the Fisheries Act 1983 and the licensing of marine farming subject to the Marine Farming Act 1974):

(ii) The occupation of space on land of the Crown or lands vested in the regional council, that are foreshore or seabed and the extraction of sand, shingle, or other natural material from that land:

(iii) The taking, use, damming, and diversion of water:

(iv) Discharges of contaminants into or onto land, air or water and discharges of water into water:”

“(g) The control of beds of lakes and rivers in the region, for the purpose of—

(i) Public access and related recreational use;

(ii) The maintenance of areas having significant conservation value.

(iii) The avoidance or mitigation of natural hazards:”

“(h) Without limiting paragraph (g), the control of the occupation of space on lands of the Crown and lands of the regional council that are beds of rivers and lakes and the extraction of sand, shingle, or other natural material from that land.”

[Page 42]

Clause 48. Contents of national coastal policy statements—

“A national coastal policy statement may state policies about any one or more of the following matters:

- (a) National priorities for the maintenance of the natural character of the coastal environment of New Zealand:
- (b) The protection of the characteristics of the coastal environment of special value to the tangata whenua including waahi tapu, tauranga waka, mahinga maataitai, and taonga raranga:
- (c) Appropriate activities involving the use and development of areas of the coastal environment:
- (d) The matters to be included in any or all regional coastal plans in regard to the maintenance of the natural character of the coastal environment, including the specific circumstances in which the Minister of Conservation will decide resource consent applications relating to—

- (i) Types of activities which have or are likely to have a significant and/or irreversible adverse effect on the coastal marine area; or

- (ii) Areas in the coastal marine area that have significant conservation value: (e) The implementation of New Zealand’s international obligations affecting the coastal environment:

- (f) The procedures and methods to be used to review the policies and to monitor their effectiveness:

- (g) Any other matters relating to the purpose of a national coastal policy statement.

[Pages 66-67]

Clause 103. Consents not real or personal property.

“(4) A coastal permit may provide for the holder to occupy a coastal marine area which is land of the Crown or land vested in a regional council, to the exclusion of all or any specified class of persons, as if it were a lease of the area, and the holder of such a permit has, in relation to the use and occupation of that area, the same rights against other persons as if he or she were a tenant of the land.”

“(5) A land use consent may provide for the holder to occupy the bed of a navigable water body which is land of the Crown or land vested in a regional council, to the exclusion of all or any specified class of persons, as if it were a lease of the area, and the holder of such a permit has, in relation to the use and occupation of that area, the same rights against other persons as if he or she were a tenant of the land.”

“(6) A permit or consent ...may allow the holder to remove sand, shingle, or other natural material as if it were a profit a prendre.”

PART VIII
SUBDIVISION

[Pages 108-109]

Esplanade Reserves

Clause 188. Meaning and purposes of “esplanade reserve”

Local Government Act 1974

s. 289(1). “...for the purpose of providing access to the sea, lake, river, or stream, as the case may be, and to protect the environment...”

Resource Management Bill 1989

188(1). In this Act the term “esplanade reserve” means a reserve within the meaning of the Reserves Act 1977, which shall be either—

(a) A local purpose reserve within the meaning of section 23 of that Act, if vested in the territorial authority under **section 196**; or

(b) A government purpose reserve within the meaning of section 22 of that Act, if transferred to the Crown under **section 192**.

(2) The purposes of an esplanade reserve are—

(a) To contribute to the protection of conservation values by, in particular—

(i) Maintaining the natural functioning of the adjacent sea, river, or lake; or

(ii) Maintaining water quality; or

(iii) Maintaining aquatic habitats; or

(iv) Protecting the natural, values associated with the esplanade reserve; or

(v) Mitigating natural hazards; and

(b) To enable public access to the sea, a river, or a lake; and

(c) To enable public recreational use of the esplanade reserve and adjacent, sea, river, or lake, where that use is compatible with conservation values.

Clause 189. Esplanade reserve along areas of water.

Local Government Act 1974

s 289. Reserves along areas of water—

s 289(1) On every scheme plan submitted to the council under this Part of this Act, unless the council, with the consent of the Minister of Conservation, considers it unnecessary to do so, there shall be set aside as local purpose reserves for esplanade purposes under the Reserves Act 1977...along the mean high-water mark of the sea and its bays, inlets, or creeks, and along the margin of every lake with an area in excess of 8 hectares, and along the banks of all rivers and streams which have an average width of not less than 3 metres (not being rivers or streams or parts of rivers or streams exempted from this subsection pursuant to subsection (7) of this section):

s 289(3) Nothing in subsection (1) or subsection (2) of this section shall require a strip of land to be set aside as reserved for the purposes specified in the said subsection (1) or subsection (2), as the case may be, along the banks of any river or stream where that land adjoins any allotment having an area of 4 hectares or more and, in the opinion of the council, that allotment is intended to be used, or will continue to be used, wholly or principally in a manner conforming with accepted farming or management practices, for agricultural or horticultural or silvicultural or pastoral purposes or the keeping of bees or poultry or other livestock.

s 289(7) The Minister of Conservation may from time to time on the application of the council declare that subsection (1) of this section shall not apply with respect to the banks, or any specified bank, of any specified river or stream or part of any specified river or stream, or may on application of the council revoke any such declaration, in whole or in part. In making his decision under this section, the Minister of Conservation shall have regard to the provisions of any proposed or operative district scheme for the locality in which the river or stream is situated.

s 289(8) Every decision of the Minister of Conservation under this section shall be final.

Resource Management Bill 1989

189. Where—

(a) A boundary or any part of a boundary of land shown on a survey plan submitted for approval under **section 183** is at, below, or traverses—

(i) The mean high water springs of the sea; or

(ii) The bank or the bed of a river; or

(iii) The margin of a lake; and

(b) The district plan does not waive the requirement for an esplanade reserve to be set aside, the territorial authority concerned shall not approve the survey plan unless an esplanade reserve is set aside on the survey plan.

Clause 190. Area of esplanade reserve and survey costs.

Local Government Act 1974

s 289(1) "...a strip of land not less than 20 metres in width

s 289(1) Provided that the council, with the consent of the Minister of Conservation, may approve the reduction of the width of the strip of land to a width of not less than 3 metres if in its opinion the reduced width will be sufficient to give members of the public reasonable access to the sea, lake, river, or stream.

s 290(5) Where pursuant to subsection (1) or subsection (2) of section 289 of this Act a strip of land has been set aside as reserved for the purpose specified in section 289 (1) of this Act along the mean high-water mark of the sea or any of its bays, inlets, or creeks, or along the margin of any lake in excess of 8 hectares and adjoining any allotment having an area of 4 hectares or more, there shall be paid...to the subdividing owner or, if he is deceased, his personal representative, out of money appropriated by Parliament, an amount equal to any additional survey costs incurred by the subdividing owner in determining the land to be set aside (such costs to be determined in accordance with the scale of fees of the New Zealand Institute of Surveyors which as current at the date of deposit of the survey plan).

Resource Management Bill 1989

190(1) An esplanade reserve shall be a strip of land not less than 20 metres in width along the mark of mean high water springs of the sea, or along the bank of any river or the margin of any lake, as the case may be.

(2) A territorial authority may, in accordance with any provisions to this effect in its district plan, provide that an esplanade reserve may be more or less than 20 metres from the mark of mean high water spring of the sea, or the bank of any river, or the margin of any lake, as the case may be.

(3) The territorial authority concerned shall pay to the owner of the land on which an esplanade reserve is set aside, any reasonable additional survey costs incurred by the owner in surveying the esplanade reserve.

[Pages 109-110]

Clause 191. Transfer of ownership of land below mean high water springs or bed of lake or river to Crown.

Local Government Act 1974

s 289(5) Where a strip of land is set aside as required by subsection (1) or subsection (2) of this section, and any land below the mean high-water mark of the sea or of its bays, inlets, or creeks or, as the case may be, any part of the bed of the lake or river or stream is vested in the person in whom the land shown in the scheme plan is vested, the council may require, as a condition of its approval of the scheme plan, that the owner shall execute, or obtain the execution of, and register, a transfer to Her Majesty of the whole or a specified part of the land below the mean high-water mark or, as the case may be, of the bed of the lake, or river, or stream which is vested as aforesaid.

Resource Management Bill 1989

191. Where—

(a) An esplanade reserve is set aside on a survey plan submitted for approval under **section 183**; and

(b) Any land below mean high water springs of the sea, or any part of the bed of the lake or river, is vested in the owner of the land to which the survey plan relates—

the territorial authority shall require, as a condition of its approval of the survey plan, that the owner shall execute or obtain the execution of, and register a transfer to the Crown of such part of that land as is below mean high water spring, or as forms part of the bed of that lake or river, as the case may be.

[page 110]

Clause 192. Transfer of esplanade reserve to the Crown.

Local Government Act 1974

[No equivalent provision—all esplanade reserves become local purpose reserves vested in a territorial authority.]

Resource Management Bill 1989

192(1) Notwithstanding the provisions of the Reserves Act 1977, a territorial authority and the Minister of Conservation may agree in writing that an esplanade reserve, or any part of an esplanade reserve, shall cease to be vested in and administered by the territorial authority but instead shall vest in and be administered by that Minister as a government purpose reserve within the meaning of section 22 of the Reserves Act 1977.

(2) Where an agreement is made between a territorial authority and the Minister of Conservation under **subsection (1)**, the Minister of Conservation shall, by notice in the *Gazette* and in accordance with section 16 of the Reserves Act 1977, classify the reserve or part as a government purpose reserve within the meaning of section 22 of the Reserves Act 1977..

Clause 193. Compensation for taking of esplanade reserve.

Local Government Act 1974

s 290. Compensation in respect of land along areas of water set aside as reserves—

290(1) Where—

(a) Pursuant to subsection (1) or subsection (2) of section 289 of this Act a strip of land that—

(i) Is situated along the mean high-water mark of the sea or of its bays, inlets, or creeks or along the margin of any lake; and

(ii) Adjoins any allotment having an area of 4 hectares or more which, in the opinion of the Minister of Conservation, is to be retained by the subdividing owner for a period of not less than 5 years from the date of deposit of the survey plan and, in the opinion of that Minister, is to be used for that period for any of the purposes specified in subsection(3) of that section,—

has been set aside as reserved for the purpose specified in subsection (1) of that section; and

(b) No part of that allotment is zoned for residential or commercial or industrial purposes under any operative or proposed district scheme at the date of the deposit of the survey plan,—

there shall be paid, as compensation, to the subdividing owner, or, if he is deceased, to his personal representative, out of money appropriated by Parliament, an amount equal to the value, as at the date of deposit of the survey plan, of the land set aside, that amount to be determined by a valuation made by the Valuer-General.

290(2) If the subdividing owner, or, as the case may be, his personal representative, is dissatisfied with the amount of any valuation made for the purposes of subsection (1) of this section, he may, within one month after notice of the valuation has been given to him by the Valuer-General, object to that valuation by delivering or posting to the Valuer-General a written notice of objection stating shortly the grounds of his objection and the value at which he contends the land should be valued.

Sections 20 to 23 of the Valuation of Land Act 1951, as far as they are applicable and with the necessary modifications, shall apply to that objection.

Resource Management Bill 1989

193(1) Subject to **subsection (2)**, where—

(a) An esplanade reserve is required as a condition of approval of a survey plan; and

(b) The esplanade reserve adjoins any allotment which, in the reasonable opinion of the territorial authority, is likely to be retained by the subdividing owner for 5 years or more,

the territorial authority shall pay compensation to the subdividing owner (or if the owner is deceased to the owner's personal representative) of an amount determined by a valuation made by the Valuer-General as being equal to the value, at the date of the deposit of the survey plan, of the land to be set aside as the esplanade reserve.

(2) The Valuer-General shall give a copy of a valuation made under **subsection (1)** to the subdividing owner who may, if dissatisfied, within one month of receipt of the valuation from the Valuer-General, object to the valuation. Any such objection shall be in writing, shall be addressed to the Valuer-General, and shall state the grounds for objection.

(3) Sections 20 and 22 of the Valuation of Land Act 1951 shall, so far as they are applicable and with the necessary modifications, apply to an objection made under **subsection (2)** as if that objection were an objection to an altered valuation under that Act.

Clause 194. Refund of compensation payment.

Local Government Act 1974

290(3) Where—

(a) Any payment is made to the subdividing owner or his personal representative under subsection (1) of this section; and

(b) Within 5 years after that date of the deposit of the survey plan the subdividing owner or, as the case may be, his personal representative or any successor in title of the subdividing owner subdivides the adjoining land or any part of it or transfers by way of sale or enters into an agreement to sell the adjoining land or any part of it,—

there shall be repayable to the Crown, by the subdividing owner or that successor in title, as the case may be, and charged against the land and recoverable as a debt, the amount of that payment to the extent that it has not already been repaid:

Provided that the Minister of Conservation, whose decision shall be final, may, in his discretion, waive such a repayment or may direct that an amount less than the full amount shall be repaid.

290(4) The right of the Crown to repayment under subsection (3) of this section shall be deemed to be an interest in the land for the purposes of section 137 of the Land Transfer Act 1952 (which relates to caveats against dealing with the land).

Resource Management Bill 1989

194(1) If—

(a) Within 5 years of the date of deposit of any survey plan on which an esplanade reserve is set aside, the land adjoining the esplanade reserve or any part of it is subdivided, sold, or made subject to any agreement to sell; and

(b) Compensation was paid under **section 193** for the esplanade reserve— then the person to whom the compensation was paid (or their personal representative) shall, upon demand by the territorial authority, repay to the territorial authority the amount of that compensation.

(2) Any money repayable under **subsection (1)** shall be recoverable as a debt due to the territorial authority.

(3) The right of the territorial authority to repayment under **subsection (1)** shall be deemed to be an interest in that land for the purposes of section 137 of the Land Transfer Act 1952 (which relates to caveats against dealing with the land).

**Esplanade Reserve provisions repealed but not replaced
by Resource Management Bill**

A Widening of riparian strips

Local Government Act 1974

289(2) Where—

(a) A strip of land less than 20 metres in width along the mean high-water mark of the sea or of any of its bays, inlets, or creeks, or along the margin of any lake, or along any bank of any river or stream has either—

(i) Been reserved for the purpose specified in subsection (1) of this section, or for public purposes pursuant to section 29 (1) of the Counties Amendment Act 1961 (as in force before the commencement of this Part of this Act); or

(ii) Been set aside or reserved for recreation purposes pursuant to any other enactment (whether passed before or after the commencement of this Part of this Act and whether or not in force at the commencement of this Part of this Act); or

(iii) Been reserved from sale pursuant to section 58 of the Land Act 1948 or the corresponding provisions of any former Act; and

(b) A scheme plan of subdivision of land contiguous to that strip of land is subsequently submitted to the council under this Part of this Act,—

then, notwithstanding that under subsection (1) of this section or under any former enactment the Minister of Conservation had consented to the setting aside of the strip of land of less than 20 metres in width, the council may, as a condition of its approval of the scheme plan, require the owner to set aside as reserved for the purposes specified in subsection (1) of this section a strip of land contiguous to the strip of land previously set aside and of a width determined by the council, being not more than the difference between the width of the strip of land previously set aside and 20 metres.

B Roads as part of land reserved

Local Government Act 1974

s 289 (4) Where, in the opinion of the council, it is in the public interest that a road or part of a road be dedicated within the area required to be set aside as reserved for the purpose specified in subsection (1) of this section, then, with the consent of the Minister of Conservation, the dedication of that road or part of that road which lies within the area set aside may be accepted in satisfaction of and in substitution for the area or part of the area, as the case may be, that would otherwise be required to be set aside under this section.

PART XI
DECLARATIONS, ENFORCEMENT, AND
ANCILLARY POWERS

[Pages 200-201]

Offences

Clause 383. Offences against this Act

“(1) Every person commits an offence against this Act who contravenes, or permits a contravention of any of the following:

(a) Sections 7, 9, 10, 11, 12, and 15 (which impose duties and restrictions in relation to land, subdivision, the coastal marine area, water, discharges of contaminants, and minerals);”

[Page 201]

Clause 384. Penalties—(1) Every person who commits an offence against **section 383(1)** is liable on summary conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$150,000, and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues.

(4) Notwithstanding anything in section 30 of the Criminal Justice Act 1985, a Court may sentence any person who commits an offence against this Act to a sentence of community service and the provisions of Part III of that Act, with necessary modifications, apply accordingly.

(6) Where a person is convicted of an offence against section 383, the Court may, instead of or in addition to imposing a fine or a term of imprisonment, make any or all of the orders specified in **paragraphs (c), (d), and (e) (ii) of section 360**.

FOURTH SCHEDULE
ENACTMENTS REPEALED

[Page 261]

“**1978, No 52—The Coal Mines Act 1979**: Sections 4 to 7, 20 to 121A, 200 to 209, 261, 264, and paragraphs (b) to (m) and (o) to (q) of section 266.”

“261. Right of Crown to bed of navigable river—

(1) For the purpose of this section—

“Bed” means the space of land which the waters of the river at its fullest flow without overflowing its bank:

“Navigable river” means a river of sufficient width and depth (whether at all times so or not) to be used for the purpose of navigation by boats, barges, punts, or rafts.

(2) Save where the bed of a navigable river is or has been granted by the Crown, the bed of such river shall remain and shall be deemed to have always been vested in the Crown; and, without limiting in any way the rights of the Crown thereto, all minerals (including coal) within such bed shall be the absolute property of the Crown.

(3) Nothing in this section shall prejudice or affect the rights of riparian owners in respect of the bed of non-navigable rivers.”

SIXTH SCHEDULE

AMENDMENTS TO LOCAL GOVERNMENT ACT 1974

[Page 285] (Proviso substituted).

Section 341. Leases of airspace or subsoil of roads—[proviso substituted].

“(1) Subject to section 357(2) of this Act, the council may—

- (a) Grant a lease to any person of the airspace or any part of the airspace above the surface of the road; or
- (b) Grant a lease to any person of the subsoil or any part of the subsoil beneath the surface of the road:”

Existing and proposed provisos:

Local Government Act 1974

Provided that no such lease shall be granted for any purpose that would be in contravention of any provision of the Town and Country Planning Act 1977.

Provided also that, in exercising the powers conferred by this subsection in relation to any airspace, the council shall ensure that sufficient airspace remains above the surface of the road for the free and unobstructed passage of vehicles and pedestrians lawfully using the road.

Resource Management Bill 1989

Provided that no such lease shall be granted for any purpose that would be in contravention of any provision of the Resource Management Act 1989.

[Page 285]. (Proviso substituted).

Section 345(3). Disposal of land not required for road—

“(3) Where any land along the bank of a river or stream with an average width of not less than 3 metres or along the margin of any lake with an area in excess of 8 hectares or along the mean high-water mark of the sea or of any of its bays, inlets, or creeks, or any portion of any such road, is stopped or diminished in width, the land which thereby ceases to be road shall become a public reserve vested in the council as a local purpose reserve under the Reserves Act 1977 for the purpose of providing access to the river, stream, lake or sea, as the case may be, and to protect the environment:”

Existing and proposed provisos:

Local Government Act 1974

Provided that the council, with the consent of the Minister of Conservation, may waive this requirement in respect of the whole or any part or parts of the land which ceases to be road, subject to such conditions as the council may impose or as that Minister may require, and thereupon, subject to any such conditions, subsection (1) of this section [sell, lease, transfer to Crown as reserve or Crown land] shall apply with respect to the land or, as the case may be, that part or those parts thereof.

Resource Management Bill 1989

Provided that the council may waive this requirement in accordance with any policies regarding esplanade reserves in an operative district scheme, and, thereupon, subject to any conditions imposed on such a waiving, subsection (1) of this section shall apply with respect to the land or, as the case may be, that parts or parts thereof.