

Queen's Chain Profile

Recorded Statements
Concerning Marginal Strips
by

Philip Woollaston

Minister of Conservation
MP for Nelson
1990

“There is no threat to the Queen's chain in this Bill or from this government.”

10 August 1989

Introduction and First Reading
Conservation Law Reform Bill
(*Hansard*, Vol 500 pages 11845, 11847)

HON. PHILIP WOOLLASTON: “The Bill also changes the law relating to marginal strips—that is, strips of land beside lakes and rivers that are surrounded by Crown-owned land. The Bill simplifies the procedure by which they will be retained in public ownership to allow access to and use of those waters should the Crown sell the adjoining land.”

“Clause 15 repeals section 24 of the existing Conservation Act, which deals with marginal strips, and substitutes new provisions. Those provisions ensure that the Crown retains ownership of marginal strips, but does not require them to be surveyed out of the adjoining title. Instead, the existence of the strips will be noted on the title and the strips will remain adjacent to the river or lake in the case of erosion or accretion of land. Owners of land adjoining marginal strips will be able to manage the marginal strips in a manner that is compatible with the objectives of the legislation, unless the Crown decides to resume the management of a particular strip.”

“The Bill provides that the Minister of Conservation may dispose of a marginal strip under certain specified conditions. Marginal strips will be created when any land of the Crown that includes an eligible river or lake is transferred to a State-owned enterprise or is in any way disposed of. Land reserved from sale under section 58 of the Land Act 1948 is brought under the Conservation Act to be covered by the marginal strip provisions.”

8 September 1989

Ministerial Press Statement

Conservation Minister Philip Woollaston says that he rejects absolutely claims by the Public Lands Coalition that the Government plans to ‘give away the Queen's chain’.

The reported claims of the Public Lands Coalition are outrageously wrong. The Conservation Law Reform Bill does not, as they claim, transfer marginal strips to private ownership. In fact the Bill expressly and explicitly reserves them to the Crown.*¹

The new proposals provide a stronger protection of marginal strips than does the present Land Act. In future reclassification can only occur if the strip has little or no conservation or public access value, or if any such values can be protected in some other way. This is a significant improvement.

22 September 1989

Letter to the Editor
Hawkes Bay Herald Tribune

“You imply that protection of marginal strips has been lessened in the Conservation Law Reform Bill. That is not the case.

The Land Act 1948 (Section 58) gives the Minister of Conservation complete discretion to waive the requirement for a marginal strip.*²

The new proposals provide a stronger protection of marginal strips than does the present Land Act.”

19 October 1989

Ministerial Reply to Individuals' Letters

"The aim of the new legislation is to make marginal strips of more practical use than at present. The key to achieving this is to make them move with changes in the coastline or the course of a river.

"Most of these strips are physically indistinguishable from the adjoining land. In most cases they are used by the adjoining owner. The intention of the new legislation is to formalise that arrangement by *allowing* me to appoint people to manage marginal strips, with the first option being given to the adjoining owner."³

"There is certainly no intention to 'sell off the Queen's Chain' as some people clearly fear. Nor would the Bill permit this."⁴

"The Government's clear objective and policy is to strengthen the provisions protecting what is often known as the 'Queen's Chain' while at the same time making the administration of the strip more practical."

10 December 1989

Transcript of 'Insight' Programme, Radio NZ

HON. PHILIP WOOLLASTON: "It has never been an intention to dispose of marginal strips, in general. What the Bill does contemplate, is where an old section 58 strip, which is now called a marginal strip, no longer serves the purpose for which it was retained, that is it's now distant from a river, or something else has happened means that it cannot provide practical access, its possible to dispose of that in exchange for a better piece of land, a piece of land more relevant to the purposes. As I say there is some concern about the way in which that is expressed that's given rise to this fear there is some sort of secret agenda to sell off the Queen's Chain. In view of that fear I'm determined that the Bill should be amended to make it quite clear that that's not a possibility."

"I'm aware that it is an area where there is very strong public feeling, and I share that strong public feeling. I certainly would be incensed myself if there were any serious proposal to dispose of the Queen's Chain. What has surprised me a little bit is the currency which, the suggestion that the Crown is going, is proposing to sell marginal strip or to make it private, has gained. I think it's disappointing that there has been such a ready acceptance of something which the Crown has said and the government has said all along its not on, its not it's intention. So I haven't been at all surprised that there is passionate feeling about this question. I share that passionate feeling. It mirrors the feelings which were expressed about the allocation of land to State-owned enterprises and to the Department of Conservation. New Zealanders are very concerned about their land and I think that's good, I applaud it."

"The Government's clear objective...is to strengthen the provisions protecting...the 'Queen's Chain' while at the same time making the administration of the strip more practical."

BRUCE MASON (PLC): "...what's happened is that perhaps the government has stepped into a bit of a trap or minefield by agreeing on the asset value for these SOE, SOE lands without taking out, or making allowance for the area of these marginal strips or Queen's Chain. So they have actually agreed on a price already as far as I understand, and that would create some difficulties that perhaps the SOE's could come back and say, well if you insist on removing these areas from the area we have agreed to pay for, we'll perhaps reopen the asset value negotiations and delay the whole setting up of our organisations."

HON. PHILIP WOOLLASTON: "Well I haven't been part of the SOE asset valuation process, but I would think not because they have known for a long time, and Treasury which conducted the negotiations for valuation have known for a long time, that marginal strips were not going to be included, so I'm sure that they would all have taken that into account."

12 December 1989

**Report of Select Committee
Conservation Law Reform Bill
(Hansard, Vol 504 pages 14463-64)**

HON. PHILIP WOOLLASTON: "...There was much concern about the provisions in the Bill relating to marginal strips. As I acknowledged when the Bill was introduced, that part of the Bill certainly needed more work—

MR GRAY: "A cop-out!"

HON. PHILIP WOOLLASTON: "No. The question was whether the Bill was held up for another round of consultation to try and do the work of the select committee before it arrived there, or whether the select committee was allowed to do its job and hear the wide range of submissions. All through that issue Opposition members hedged their bets and were very quiet, because they were being shouldered by Federated Farmers on the other side, who were saying: "We didn't want the public to have too many rights on the Queen's chain. Keep quiet." The Opposition did not speak up. I quote from the legal advice given to the Public Lands Coalition by its lawyer—advice that the organisation was kind enough

to pass on to me. On the subject of strips defined under section 58 of the Land Act the lawyer stated: "There has been a lot of misinformation in the media about the repeal of section 58, but, as I read the Bill, all of the strips, including section 58, that have previously been created or reserved have been preserved."^{*5} His advice to the campaign was that the Bill was OK in that regard. The committee has done an excellent job, and I thank members of the committee for that."

13 December 1989 Ministerial Press Release

WOOLLASTON WELCOMES CHANGES TO QUEEN'S CHAIN LAW

Conservation Minister Philip Woollaston today welcomed the changes made to the Conservation Law Reform Bill by a Parliamentary Select Committee. "The Bill as introduced was adequate for introduction and reference to the Select Committee but, the legislation has clearly benefitted from the many submissions made on it and the work of the Committee" he said in the debate on the Committee's report.

The main changes to the Queen's Chain provisions are:

- the Crown ownership of the strips is made indisputable ^{*1}
- the location of strips will be shown on proper plans
- strips cannot be sold. Existing strips that no longer are alongside waterways will be able to be exchanged for new ones that better provide for access or conservation
- if there is absolutely no reasons for creating a strip the Minister will still be able to waive the requirement. This will only be able to happen when Crown land is sold, as under present legislation but subject to much tighter conditions than in the Land Act 1948
- the Minister will be able to decide whether or not to appoint a manager for a strip and who that manager should be ^{*3}
- managers of strips will not be able to close strips. The powers of the Minister of Conservation to restrict public access onto all conservation land in exceptional circumstances will apply to the Queen's Chain^{*6}
- a manager of a strip will need the Minister's approval to alter the way a strip is managed or erect any significant improvements
- it will be an offence for a manager of a strip to damage it or use it in a way that is contrary to the objectives of the strips

Mr Woollaston said the changes will allay the concerns some members of the public have about the security of public access to rivers, lakes and the seashore.

"There were concerns arising from ambiguities in the original Bill" he said. "The Committee has done an excellent job in removing the ambiguities and making the intention of the legislation clear.

1 March 1990 Ministerial Press Statement

PLC'S "QUEEN'S CHAIN FACTS" ARE FALLACIES

A news sheet circulated by the Public Lands Coalition's Dunedin Office is based on a number of misapprehensions on the law as it now stands, according to Conservation Minister Philip Woollaston. "The latest claims by the PLC are a mixture of fact and fallacy" said Mr Woollaston.

There is no total right of access at all times under the Land Act, as PLC claims. One of the problems of the present law is that the public has no guaranteed right of access to marginal strips."^{*7}

The Bill currently before Parliament guarantees public access, with the provision for the Minister (not a neighbour or manager) to restrict access when justified. The PLC correctly point out that the word "temporarily" was omitted in the Bill was reported back from the select committee. I am now looking at re-inserting that by way of a Supplementary Order Paper.

The pamphlet incorrectly claims that a new disposal clause has been added.^{*8} The power in the original Bill to dispose of marginal strips has been removed entirely. It has been replaced by a clause allowing for a decision to be made at the time of the disposal of the land to retain or not to retain a marginal strip. The present law also allows the Crown not to take a strip.

The discretion in the Bill is much more restricted than the powers in the current Land Act. At present the Minister of Conservation may decide not to take a marginal strip, or reduce it down to 3 metres, without being required to consider anything. The Bill allows the Minister not to take a marginal strip only if it would have little or no conservation benefit. I am however prepared to consider whether the Bill should be further amended so it accords more closely the old Land Act.

PLC assert that managers appointed under the Bill will have considerable proprietary interest in improvements created on the land which may outweigh the Crown's legal interest as owner. That is clearly not the case;^{*9} however if it is not obvious a further clarification may be required.

The PLC claim that fishing lodges and suchlike may be built on a marginal strip. The Bill clearly does not allow that.^{*9} It requires that marginal strips be managed for the purposes of conservation and public access. A fishing lodge, whether private or commercial, would obviously be contrary to these purposes and could not be allowed on a marginal strip.

I appreciate the desire of PLC to achieve public access to marginal strips. While some minor and technical changes will be made in a Supplementary Order Paper, the legislation now demonstrates the Government's determination to secure that right for New Zealanders," said Mr Woollaston.

8 March 1990

Second Reading

Conservation Law Reform Bill

(Hansard, Vol 505 pages 499-500)

HON. PHILIP WOOLLASTON: "The part of the Bill that attracted the most comment before the committee was that relating to marginal strips. The measures in the Bill are the result of the Government's examination of the means of improving public access along the coast, the lakes, and the rivers. Marginal strips—or section 58 strips as they are popularly known, or sometimes the Queen's chain—have long been assumed to secure public access to the margins of rivers, lakes, and the sea. The reality is somewhat different. For example, if rivers move—as they often do by erosion and aggregation—the strips that were fixed by survey do not. In many areas the Queen's chain languishes out in the middle of farm land, and there is no Queen's chain adjacent to the river to which it was once intended to give access."

"It is not been commonly realised that, when lands of the Crown have been sold in the past, only land administered under the Land Act has had strips laid off. For example, if a State forest was sold the forest could be sold right to the coast, lake, or river.*¹⁰ The Bill changes that aspect. There was also a broad discretion in the Land Act for the Minister of Conservation not to take a marginal strip.*² The discretion is substantially reduced in the Bill. All lands of the Crown are caught by the marginal strips provision, and marginal strips will be created, for example, when Crown forest leases are issued, even though the land itself remains Crown-owned. Now the strips will also move when the river moves, which is a common-sense approach, and there is no need for costly surveys.*¹¹ In the past those strips have simply been reserved from sale. There were no specific provisions guiding their management."

MR STOREY: "How will they move?"

HON. PHILIP WOOLLASTON: "There are specific objectives that include conservation, recreation, and access. The member asks how they will move. He has had a long time in which to read the Bill, which stipulates that the strips extend for 20 metres from the river bank, wherever that may be from time to time. The objectives of conservation purposes, recreation, and public access govern the way the strips can be used and the way in which they must be managed. The Bill as introduced contains several clauses, which, in the light of submis-

"The Bill as introduced...did not adequately reflect the Government's policy or objectives in amending marginal strip provisions."

"I certainly would be incensed myself if there were any serious proposal to dispose of the Queen's Chain. I'm aware that it is an area where there is very strong public feeling, and I share that strong public feeling."

sions to the committee, could be considered somewhat ambiguous; it was thought that they did not adequately reflect the Government's policy or objectives in amending marginal strip provisions."

"The select committee made some specific changes, and I shall comment on them. The Crown ownership of the strip is made indisputable in the Bill. The draft Bill contained the provision for recording the existence of a marginal strip on the title of the adjoining land. That was misunderstood by some people to mean that ownership of the strip passed to that adjoining landowner. Amendments made by the committee made it absolutely clear that ownership of marginal strips remained with the Crown. The location of the strips will be shown on proper plans, as happened in the past under the Land Act 1948. Strips cannot be sold. The original Bill contained the provision that strips no longer serving any conservation or access purpose could be invoked and subsequently sold. That provision raised fears in some people that some Government in the future might use it to sell off large numbers of marginal strips. To allay that fear the committee changed the Bill so that the strips once created cannot be sold. Existing strips that are no longer alongside waterways will be able to be exchanged only for new ones that better provide for access or conservation.*¹² That was the intention when the Bill was introduced, and the changes to it make it clearer."

"If there is absolutely no reason for creating a strip, the Minister will still be able to waive that requirement. However, that can happen only, first, when Crown land is sold, as under the present legislation, but subject to much stricter conditions than in the Land Act 1948. The present legislation does not provide for a total waiver of the strips around the shores of lakes and sea coasts. There will be a supplementary order paper that will contain several technical and drafting provisions, as well as some changes, particularly ones that restricts the powers of the Minister of Conservation to reduce the width of strips along to the sea coast and lake shores, and makes those provisions line up with the the current Land Act. The Bill also gives the Minister of Conservation discre-

tion to decide whether a manager of the strip should be appointed and who that manager should be.”

“A specific problem has arisen in relation to current forest leases. The supplementary order paper will contain a provision that the harvesting of exotic trees on marginal strips can take place.*¹³ The Bill as introduced gave rise to a concern that managers of strips would be able to stop the public from having access to them. That role is a proper one for the Minister of Conservation. The Bill as reported back gives the Minister that role, not any manager. It should be noted that the provisions in the Bill give for the first time a right guaranteed in statute to the public to have access to marginal strips. The Land Act 1948, which is in force at present, has only given access at the pleasure of the Director-General of Lands; there has been no statutory protection of that right in the past. The Conservation Law Reform Bill gives that right.”*⁷

“The present provisions in the Bill provide for the Minister to stop access in order to protect public safety or to protect significant assets. The supplementary order paper will clarify the Government’s intent about that restriction of access. It will be made clear that there may be only a temporary closure, and only for the purposes of protecting public safety, or in times of high fire risk when conditions exist such as those covered in section 32 of the Forests and Rural Fires Act 1977.”*¹⁴

“The Bill as reported back has other important provisions in relation to marginal strips. The first is that a manager of a strip will need the approval of the Minister of Conservation to alter the way in which a strip is managed or to erect any significant improvements.*⁹ It will also be an offence for a manager of a strip to damage it or use it in a way that is contrary to the objectives of the strip.*¹⁵ I believe that those amendments, with the other minor amendments in the supplementary order paper, and the changes made by the select committee, will provide very strong law governing the public’s right to use and to have managed marginal strips for conservation, access, and recreational purposes. At this point I am pleased to note the support that Opposition members on the select committee gave to ensure that the Bill reflected the Government’s policy on the need to protect marginal strips. That bipartisan approach is very good.”

30 March 1990

House in Committee

Conservation Law Reform Bill

(Verbatim Transcript)

HON. PHILIP WOOLLASTON. “The Conservation Law Reform Bill...modernises and improves on the marginal strips provisions in existing legislation, and allows for the situation that can arise for example if Crown land was conveyed to SOE’s rather than sold as was only possible under the Land Act.”

“...and there are some further changes to marginal strips, the marginal strips provisions, and I want to make

quite clear what those are. The ability to close strips to protect assets was in the Bill as it came out of the select committee. That was seen as too broad by a lot of people and there was concern what might be meant by protecting assets. The intention was that where marginal strips are created in a plantation forest as can now happen even though the land is not being sold under this legislation, will be able to, be able to create marginal strips in plantation forests in respect of which cutting and management rights may be sold for a period of time. There is a need to allow a forest manager who has a management right over the forested marginal strip to protect against fires in particular. So what the SOP does is that it removes the wording to protect assets, and it imports the wording relating to section 32 of the Forests and Rural Fires Act which makes it quite clear that when a forested area can be closed under section 32 of that Act then the same sort of consideration would be allowed here and a marginal strip will be able to be closed temporarily for the purposes of fire protection,*¹⁴ but the principle purpose there is solely for...”

“...for the purpose of public safety and it’s made clear also in the SOP, I think it was omitted by the select committee that such closures can only be temporary. The other major difference which is imported into the marginal strip regime by the supplementary order paper is that relating to the right of the Crown not to take a marginal strip, in other words to waive taking of a marginal strip, a right which is carried forward from the existing Land Act—it is made more specific already in the legislation because conditions are laid down that have to be met relating to the fact that the proposed marginal strip would not serve any useful purpose for the benefits of conservation or public access or recreation. But the one change, the one significant change, the most significant change that was left in the Bill as it came out of the select committee was that a total waiver under those circumstances could be granted either along a river, or a lake front, or the sea coast, and it’s been drawn to my attention by a number of groups that they are very concerned at that does change the regime in respect of lakes and the sea coasts, because the existing Land Act says that the waiver can be complete in respect of a river but only down to 3 metres in respect of a lake front or sea coast even if it would serve no useful purpose, and in response to the submissions I have received on that I have introduced into the supplementary order paper a

“It will be made clear that there may be only a temporary closure, and only for the purposes of protecting public safety, or in times of high fire risk...”

“Public safety means a lot of things.”

change which will not allow the marginal strip to be reduced, to be dispensed with totally along the sea coast or lake front but only reduced to not less than 3 metres.”*16

MR STOREY: “...the select committee had a pretty good idea of where they wanted to go. But I must say ever since it has left the select committee its been getting into a glorious tangle, and I don’t see what the Minister said particularly about marginal strips. He said that one of the areas that was causing concern was the ability to close marginal strips, to close marginal strips. I never had any great problem with that. I thought it was very sensible that somebody, at some time, should have the power to close the marginal strip, but it now seems that the only reason anybody will have the power to close the marginal strip, the example the Minister gave was the forestry estate, where there may be a fire. I want to...”

HON. PHILIP WOOLLASTON: “Public safety, floods.”

ROB STOREY: “...exactly, but alright then, floods, and timber felling operations, all of those should be reasons, not just fire, Mr Speaker there...well I hope...”

HON. PHILIP WOOLLASTON: “Public safety means a lot of things.”*14

ROB STOREY: “...the Minister hasn’t tightened up to the extent that the person who is managing the marginal strip will not be able to close it other than for very extreme events.”

HON. PHILIP WOOLLASTON: “For reasons of public safety.”

HON. PHILIP WOOLLASTON: “The member for, the member for Waikato raised the question of closure of strips and I would just like to say that these powers are peculiar to the closing of marginal strips. They are of course in addition to the powers contained in section 13 of the Conservation Act which lays down the criteria under which the Minister of Conservation may close any conservation area which of course includes a marginal strip, but the two particular powers are narrow, because they are in addition to the existing powers of closure, and it is proper that they should be narrow...”

ROBIN GRAY: “...am I also going to get the assurance from the Minister that indeed he’s got no intention of changing the concept of the Queen’s chain as we have got it at the present.”*17

HON. PHILIP WOOLLASTON: “Absolute assurance!”

ROBIN GRAY: “You give absolute assurance?”

HON. PHILIP WOOLLASTON: “In fact the SOE makes it even stronger, the SOP makes it even stronger.”

ROBIN GRAY: “Right because, you know I just said to the Minister that there is a feeling out in the community at the present time that you are hell-bent in taking away a lot of those rights from individuals. I want to emphasise to the Minister that the average New Zealander who is struggling under the government at the present time, making a living during the week, does enjoy going into the community having a bit of fishing, a bit of duck shooting or hunting or so forth and wants the right to be able to maintain to do that. Now if the Minister is going to stand on his feet right now and give me an assurance so that I can put it in the local papers, that I have got an absolute, an absolute assurance...now without interrupting, I just ask the Minister to stand up and put it in *Hansard*, that’s what I wanted, to put it in *Hansard*, put it across the air, without trying to pinch the microphone from the chairman of this committee, I want the Minister to stand up tonight and lets have it recorded in *Hansard* that he gives the absolute assurance that the Queen’s Chain as we know it at the present time in New Zealand will indeed not be changed under this government?”

HON PHILIP WOOLLASTON: “I am very happy to assure the member once more, as I did in the second reading, and I will certainly put it into *Hansard* I will do it in the third reading when that’s possible that there is no threat to the Queen’s chain in this Bill or from this government.

ROB STOREY: “...Does the Minister now believe that with the amendments that are set out in the supplementary order paper he has the ability to sell marginal strips where they are redundant and to purchase new marginal strips along the edges of rivers where they have moved. Does he now have that power so that he can move in those specific areas? Is he sure that he now has that power?”

HON. PHILIP WOOLLASTON: “He is confident that he has the power to exchange unusable old marginal strips for usable new marginal strips. Not to sell it, but to exchange it.”*18

ROB STOREY: “Not to sell it but to exchange it. The problem is, Mr Chairman, that the select committee grappled with having looked at this particular diagram, on occasions the person who has now acquired the marginal strip is not the owner of the land that the Minister wants to purchase. So the Minister is now really hamstrung himself to the extent that he has to have a two-way swap between the person who has acquired land, the marginal strip, and the person who has now acquired a river and he wants to obtain some land from so that access can be maintained. So I want to ask the Minister in that situation he cannot sell the marginal strip, are you

now totally dependent on the goodwill of the two landowners affected to actually be able to ensure that the marginal strip moves with the river? Could he answer me that question?"

HON. PHILIP WOOLLASTON: "A marginal strip under this Act does move with the river. What we are talking about is old marginal strips, old section 58 strips which don't, and the Act gives a mechanism for exchanges.*¹⁸ Clearly that, that depends in putting right the past mistakes, that depends on a degree of goodwill from landowners."

ROB STOREY: "Right Mr Chairman, well I accept the Minister's answer. I hope in fact on this occasion he is correct."

5 April 1990
Third Reading
Conservation Law Reform Bill
(*Hansard* Vol 506, pages 1373, 1386)

HON. PHILIP WOOLLASTON: "The supplementary order paper made more changes to marginal strips. I shall not go through them *in extenso*, because the Committee has heard about them and the public has access to the supplementary order paper. Essentially, the changes made more clear in the legislation the public's rights in relation to marginal strips—the public's right to access either to or over a marginal strip, and the public's right to expect that a marginal strip will be managed in a particular way, that is, that every marginal strip will be managed for the purposes of public access, conservation, and recreation over and above any other use to which it might properly be put."

"In order to make that clear, the supplementary order paper made two changes. The power of the Minister of Conservation to close strips has been limited. For example, it has been made clear that any such closure can only be temporary—that is, lasting for the duration of the actual reason that led to it. For the protection of private assets on the strip, the second change removes one of the reasons for which a closure could have been made in the earlier legislation, and only leaves two reasons for closure. A strip can be temporarily closed for reasons of public safety and fire hazard. Fire hazard obviously relates particularly to marginal strips in afforested areas and to trees."

"The supplementary order paper has removed any last vestige of doubt about marginal strips. The supplementary order paper also limits further the powers of the Government to waive the requirement for taking a strip, in so far as it removes the power to waive that requirement in relation to lakes and the coastline and replaces it with a power to reduce the strip to not less than 3 metres.*¹⁹ That limitation parallels exactly the restrictions on that power in the Land Act. The provisions in the

supplementary order paper for marginal strips should allay any last vestige of public concern expressed about the strips."

HON. PHILIP WOOLLASTON: "I now touch on the matters raised by the member for Sydenham. He had the gall to talk in the House about cynicism and then to make a speech that was such rubbish and was so despicable in its attempt to convey an impression that was other than factually correct. That speech was the worst such example I have heard in the House, and I have heard some shockers in my time. The member for Sydenham claimed that there is at present an absolute right of access to marginal strips, and that the Bill removes it. I put it on the record that there is no right of public access to marginal strips at the moment. That is one of the problems with the Land Act. It does not guarantee the public's right of access to marginal strips. That right exists at the pleasure of the Department of Conservation."*⁷

MR GRAY: "What?"

HON. PHILIP WOOLLASTON: "Yes, it does. The Bill makes that right clear in law. It states the very limited times at which access to marginal strips can be removed temporarily only for reasons of public safety, and it can be done then only for as long as the need exists. The member suggested that the Bill provided a means to privatise marginal strips or to sell them off, and he used both of those terms. That is misleading. If the member had read the Bill he would know that no such power is provided.*²⁰ He tried to parade the very limited power provided in the Bill for not taking a marginal strip as though it were a novelty. If he had read the existing Land Act he would know that there is a total discretion not to take a marginal strip along a river and that there is a total discretion for the Minister of Conservation to reduce a marginal strip to as little as 3 metres on a lake or on the sea coast without any objective consideration."*¹⁶

"The legislation removes that total ministerial discretion. It states that the power can be exercised only when it can be demonstrated that the marginal strip that would otherwise exist has little or no value for conservation, for access, or for recreation. The Bill improves considerably the rights of the public in relation to marginal strips. That is a fact, and the member was misleading or mistaken—I am sure that he was genuinely mistaken—in suggesting otherwise."

"I put it on the record that there is no right of public access to marginal strips at the moment....That right exists at the pleasure of the Department of Conservation."*⁷

Footnotes

*1 Explicit reservation of strip ownership to the Crown did not occur until the Bill was reported back by the select committee, whereas section 58 of the Land Act was explicit.

*2 Ministerial discretion to waive the establishment of strips under the Land Act was not 'complete' as claimed. The discretion was confined to rivers and streams.

*3 The introduction version of the Bill did not give the Minister any option over appointment of adjoining landowners as managers—it required the Minister to appoint such. See 'Appointment of Managers' below.

*4 See 'Disposal' below.

*5 Criticism in the news media of the repeal of section 58 was because of its replacement by 'marginal strips' with different rules involving private management and development, and being liable to closure and disposal. There was no misunderstanding by the PLC that repeal of section 58 meant consequent total loss of strips; it was the change of rules governing them that was the basis for criticism.

*6 See 'Closing' below.

*7 See 'Explanation' below under 'What the Conservation Bill replaced'.

*8 The PLC's 'Queen's Chain Facts' described the new waiver provision as "an entirely new (land) disposal clause." This applies for areas which may be sold in the future without provision for marginal strips. The select committee removed from the Bill the ability to dispose of *existing* marginal strips, but added the new land disposal/waiver power.

*9 See 'Development' below.

*10 Pre-SOE practice when State Forests were no longer required was for areas to revert to Crown land status, where section 58 would apply to any sales or other dispositions.

*11 PLC disputes that survey costs would be high, as rivers, lakes etc often provide boundaries for SOE lands. Whether or not marginal strips are laid off, survey is still required for the issue of title. In most situations little extra cost would be involved to define marginal strips. See also *12.

*12 See 'Movable Strips' below.

*13 See 'Development' below.

*14 This change not made until Committee stage. See 'Closing' below.

*15 See 'Offences' below.

*16 The Minister compares separate provisions in both the Land Act and Conservation Law Reform Bill/Act for waivers and reductions in width. This confuses the differences between these laws.

*17 See *7 and *17 below.

*18 See 'Movable Strips' below.

*19 The Government added powers to reduce the width of strips along lakes and coasts. This coincided with removal of proposed power of waiver for these areas. See 'Reduction in Width' below.

*20 Jim Anderton's comments related to privatisation through private management of strips, and the sale of land exempted from the establishment of strips.

Changes to the Conservation Law Reform Bill

As Introduced 10 August 1989

Disposal *4

Ability to revoke and dispose of any existing marginal strips if of little or no value for conservation and the provision of public access; or protection can be effected by another means; and the current productive value of the strip is greater than its conservation value.

Waiver

Requirement to establish strips except on urban lands. The Bill as introduced had no provisions continuing Land Act waivers and reductions in width. Equivalent provisions were added to the Bill after the Select Committee removed the proposed ability to dispose of existing strips.

Movable Strips

New marginal strips to be movable by simultaneous creation whenever alteration of shores, river banks etc. Existence of strips recorded by notation on certificates of title rather than by fixing boundaries by survey and recording on plans. Movable strip provisions do not apply to existing marginal or section 58 strips.

Reduction in Width

No power to reduce width of strips.

Closing

Managers able to temporarily close strips for operational or safety reasons and prohibit the bringing of any animals on to strips.

Appointment of Managers *3

The Minister 'shall' appoint suitable persons, including adjoining landowners on application, to be managers of marginal strips, except around controlled lakes.

Development *9

The manager strip may make improvements to the strip including the planting or harvesting of crops, or trees.

Select Committee Report 12 December 1989

Disposal

Ability to revoke and dispose of strips removed, except for land exchange purposes.

Waiver

Exemption of urban lands removed, but power added to waive the establishment of strips when Crown lands are sold if of little or no value for conservation and the provision of public access or protection can be effected by another means.

Movable Strips *12

Further provision added that allows revocation and exchange of redundant existing strips for new strips.

Closing *6

Powers of closure over strips widened. The Minister of Conservation, on the request of a manager, may close a strip "where any operation proposed on the strip will significantly affect public safety or where closure is necessary in any case to protect any asset." No time limit.

Appointment of Managers *3

The Minister 'may' appoint adjoining landowners, or some other 'more suitable' person, as managers.

Development *9

The manager of a marginal strip shall obtain the written consent of the Minister before making any significant change to the management regime of the strip, and before making or erecting any significant improvements to or on the strip.

Offences *15

Every manager of a marginal strip commits an offence who knowingly damages the marginal strip or causes to be damaged the strip or any part of it; or knowingly uses the marginal strip for any purpose contrary to the Act.

Second Reading 8 March 1990

No further changes.

House in Committee 30 March 1990

Disposal

As above.

Waiver

Waiver powers limited to banks of rivers and streams.

Reduction in Width *19

Minister may approve the reduction of the width of a strip along a sea or lake shore to not less than 3 metres if satisfied that its value in terms of the purposes will not be diminished.

Movable Strips *18

As *12 above.

Closing *14

Powers of Minister limited to temporary closures where any operation proposed on the strip will significantly affect public safety or where fire hazard conditions exist.

Appointment of Managers

The Minister may appoint either a Crown forest licence holder or the Director-General to be manager of the strip, but shall not appoint any other person to be the manager. Managers of strips shall 'enable' members of the public to have access along the strip.

Development *13

The holder of a forestry licence may manage and harvest exotic plantation trees existing at the time of the grant of the licence on any marginal strip adjoining the land to which the licence relates and may carry out one replanting of such trees on the strip.

Offences

As above.

Third Reading 5 April 1990

No further changes before Royal assent.

What the Conservation Bill replaced—

The Conservation Law Reform Act 1990 primarily replaces Queen Chain strips created under section 58 of the Land Act 1948, deeming them 'marginal strips.'

*17 In accordance with Queen Victoria's Instructions to Governor Hobson in 1840, section 58 strips existed for public recreation and to remain 'free of any private occupation for any private purposes', unlike other Crown lands. Section 58 provided—

- No rights for adjoining owners to develop strips or to obstruct public use. Informal use by farmers etc. was tolerated as an indulgence on the part of the Crown and the public.
- Direct management by the Crown; only minimal administration proved necessary.
- Public access along the banks of waterways. Only emergency authorities, under their own legislation, had any powers of closure. These powers remain.

*7 *Explanation:* The Government's claim that there was no right of public access *along* S 58 strips is used as justification for claiming that the Bill is an improvement. However legal advice to the PLC says, in part— "Although the direct evidence is scarce we have little doubt that the purpose of Section 58 Strips is the preservation of public access. The best direct evidence...is to be found in the proviso to Section 58(1). It states:

"provided that the Minister may approve the reduction in width of the strip of land to not less than 3 metres if in his opinion the reduced width will be sufficient for reasonable access to the sea, lake, river or stream."

This proviso is clear evidence that the purpose of the Section 58 Strip reservation is the provision of reasonable access to water. The question is whose access? Since the Crown is the land owner selling or otherwise disposing of its land it is free to protect its rights of access by contract or by easement (right of way). The only satisfactory inference is that the reasonable access is being reserved for the public."

Government MP's confuse the distinction between access *to* and access *along* strips. Legal rights of access *to* strips may or may not exist for particular strips, therefore it is technically correct to say that there is no right of access to (all) strips, but wrong to infer that this applies to the strips themselves. The Bill does not address the matter of access *to* strips.

What was needed—

Retention of the original intent of the Queen's Chain by—

- Removal of all powers of closure from the Bill.
- Establishment of strips when all lands of the Crown are sold or leased.
- Retaining the Department of Conservation as the sole manager for all marginal strips.