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Queen's Chain Profile

Recorded Statements
Concerning Marginal Strips
by

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Leader New Labour Party
MP for Sydenham
1990

"The Conservation Law Reform Bill is the first step towards New Zealanders becoming second-class citizens in their own country."

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8 November 1989

Dunedin Star Midweek

JIM ANDERTON: "...Another example of Government's obsession with corporate profitability and its insensitivity to the needs of ordinary people was its intention to repeal the Queen's Chain legislation in the Land Act and the Conservation Act 1987, and allow land adjoining waterways to be effectively privatised."

"New Labour is committed to opposing the Conservation Law Reform Bill. Free access to rivers, lakes and beaches for all New Zealanders goes back to a Royal Decree by Queen Victoria in 1840. The NLP see no reason whatsoever why this birthright should be disposed of merely so that SOE's can make an easy dollar."

"The Conservation Law Reform Bill is the first step towards New Zealanders becoming second-class citizens in their own country. The proposal to allow Ministers to totally dispose of marginal strips could easily be used to close off the most attractive beaches and sought-after fishing spots in favour of those able to pay for the privilege of using these areas. A very real danger of any 'Ministerial Discretion' clause is that it is an open invitation for corruption to enter dealings between government and business."

8 March 1990

Second Reading
Conservation Law Reform Bill
(*Hansard* Vol 505 pages 517-18)

MR ANDERTON: "The Minister of Conservation was eloquent about the importance of any concern people might have about the Queen's chain and its preservation. The Minister of Fisheries said that there was no such thing, and the member for Lyttleton assured us that the Queen's chain would be safe. In November last year the Prime Minister had no such confusion or doubt. He said that the Government had no intention of restricting the public's right of access to the Queen's chain. He said that he wanted to assure everybody that the Queen's chain is secure, the Government will not take it away, it is an important part of New Zealand's history, we want it, we will have it, and we will keep it. Those seem to be certain words but, as many members and the public know, the Government's words are not to be taken at face value."

"The Queen's chain is part of the country's heritage. For the information of members of the public who may be listening, there is a variety of categories of Queen's chain in descending order of frequency: section 58 strips under the Land Act; road reserves under the Local Government Act; reserves under the Local Government Act; and, of course, marginal strips under the Conservation Act. The Government has to explain in the second reading debate and the Committee stage why, under the Conservation Law Reform Bill, it is turning all section 58 strips into marginal strips and, furthermore, under section 24A is allowing itself to opt out of establishing marginal strips in the future when any lands of the Crown are sold or leased."

"That has obvious implications for the Government's massive asset sale programme. That is why the Bill deals with that matter. It is not out of any great concern for the conservation of the strips; it is because of the asset sale programme of the Government. The State Services Commission report and Cabinet minutes on that matter confirm that, and the Minister who was interjecting should go back and read them, and find out the reason for the legislation. Pressure to introduce the Bill came from the State-owned enterprises—Electricorp, Landcorp, and so on."

"That is why the Government is allowing, under this Bill, the appointment of adjoining landowners or some other "more suitable person" as private managers of marginal strips. Managers will, for the first time, be able legally to make improvements and build other assets on marginal strip land. Improvements may include buildings, shore facilities, fences, crops, pasture, trees, and even soil fertility under section 24G. How on earth will access of the public to its heritage through marginal strips be improved by building shore facilities, fences, crops, and so on?"

"The Bill also provides for the closure of public access by the Minister of Conservation on the request of a private manager when any operation proposed on the strip will significantly affect public safety or when closure is necessary in any case to protect any asset. There are no restraints, limitations, or time-limits on the exercise of the power, which unnecessarily expands the existing powers held by the police and the fire authorities, which can act in that regard without the provisions of the Bill. I put three questions to the Government, in particular to the Prime Minister. First, why does the Bill provide powers of closure to public access to the Queen's chain, especially those strips created under the Land Act to which the public has enjoyed right of access for more than a century, when the Prime Minister said on 28 November that he had no intention of restricting the public's right of access to the Queen's chain? He said that he had no intention of restricting public access, yet the Bill before the House does exactly that."

"The second question I want the Government to answer is: as the Prime Minister said in his press release of 28 November that the Government wants the Queen's chain, why has the Government acted in such an inconsistent manner as to wisely delete provisions from the Bill for the revocation and disposal of marginal strips, then introduce a new section—the proposed section 24A(a)—allowing the Minister of Conservation to declare any lands of the Crown to be exempt from any requirement to establish marginal strips?"

"The third question that the Minister and the Government have to answer is: if, as the Minister stated in his press release of 28 November, it is the Government's intention to "strengthen protection of the Queen's chain", not the reverse, why does the Bill provide for the appointment of private managers over marginal strips—which are already deemed to be specifically protected areas under the Conservation Act 1987—with powers to build structures and create other private assets and then request closure of the strips to the public in order to protect such assets? How do those provisions honour the Prime Minister's commitment to preserve public access to marginal strips absolutely?"

"In respect for your ruling I shall be mercifully brief and conclude, but I have to say that the public and the House have no reason to trust the Government or its legislation. Promises mean absolutely nothing to the Government, let alone legislation, and this Bill means a big step backwards in terms of public access to the people's own heritage, for which they will not thank the Government, which, mercifully, has only 7 months left in office."

5 April 1990

Third Reading
Conservation Law Reform Bill
(*Hansard* Vol 506, pages 1380-82)

MR ANDERTON: "I hate to break up the cosy, two-party club on the Conservation Law Reform Bill—a Bill that I believe is in effect a sell-out of New Zealand's heritage in the form of the Queen's chain."

DR PETER SIMPSON: "Rubbish!"

MR ANDERTON: "We will see what that member answers after we have gone through one or two matters that are facts, rather than the fantasies that I have heard him talk about this afternoon. Last Friday in the House the ~~member for Waikato~~ [Minister] said by way of interjection: "Public safety means a lot of things." As the Bill allows public access to the Queen's chain to be denied in the interests of public safety, that statement has some rather sinister implications, given the Government's track record in keeping its promises."

"That concern is highlighted even more starkly when one considers the original establishment of the Queen's chain on 5 December 1840. Queen Victoria's instructions to Governor Hobson, dated 5 December 1840, in clause 43, read in part: "That you do not on any account or on any pretence whatsoever grant, convey, or demise to any person any of the land so specified, nor permit or suffer any such lands to be occupied by any private person for any private purpose". That was the original intention of the Queen's chain. That instruction has meant in practice for 150 years—and it is ironic that the Bill is being passed in our sesquicentennial year, 1990—that no private interests have been allowed to be created on section 58 strips—that is under the Land Act—or the Queen's chain, as it is commonly known."

"The Bill allows the ability for the Minister, or marginal strip managers appointed by the Minster, to close public access to the Queen's chain for the first time. Managers of marginal strips will now be able to

> "The Government would have us believe that nothing is changing, but the change is fundamental." *[1]
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> "The Government has failed to establish any need for privatising the control over public lands as the section proposes to do for marginal strips."

develop improvements on the strips and be able to request closures of those same Queen's chain strips. How does that enhance or guarantee public access to the people's own land and heritage in the shape of rivers, lakes, forests, and the sea? The Government would have us believe that nothing is changing, but the change is fundamental.*[1] Last Friday, 30 March, the member for Clutha asked the Minister of Conservation whether he could obtain an assurance from the Minister that he had no intention of changing the concept of the Queen's chain as it exists at present. The Minister of Conservation said: "Absolute assurance, the supplementary order paper makes it even stronger." The member for Clutha then said: "I want the Minister to stand up tonight, and let us have it on record in *Hansard* that he gives an 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 and therefore under this Bill." The Minister replied: "Yep, I am very happy to assure the member once more, as I did in the second reading—and I'll certainly put it in the record of *Hansard*; I'll do it at the third reading if that's possible—that there's no threat to the Queen's chain in this Bill or from this Government."

"However the Bill will repeal the largest single provision for the Queen's chain in New Zealand—namely section 58 of the Land Act 1948—allowing marginal strips to become subject to the Conservation Act. That is what the Bill does, and the Minister is on record as saying that there is no threat whatsoever to the Queen's chain "as we know it at the present time". That is the most unmitigated rubbish I have ever heard. If the Minister is pleased to go on record in *Hansard* as being quoted as saying that, history will have another view of the matter. Under the present section 58 of the Land Act there are no powers of closure to public access either by the Crown or any other party, and no ability to appoint private managers over the marginal strips, but the Bill creates that ability. The Minister has told the House that nothing would be changed. I am glad that he is consulting his advisers, because he needs some advise."

"The Crown's interest in the strip at present is total, with no ability to appoint non-state agents to act on the Crown's behalf. When the member for Lyttleton interjected that that was rubbish I invited him to ask his Minister to explain how something that has been changed so fundamentally could be said to be no change at all. No one in this country who has read the present Act and the Bill could believe that. Contrary to the Minister's statement, there is a very clear change of the concept of the Queen's chain."

"It seems to me that this is another example of the weasel words that I became sick and tired of when I was on the Government side of the House, when Government members used words to say one thing but meant exactly the opposite. [*Interruption.*] It has got them going. I hope that more of them will come into the House. They must have been stung by the comment yesterday about the lack of their presence in the Chamber for a debate of that kind. The overwhelming public rejection of the prospect of private control over public land has been—"

JACK ELDER: "I raise a point of order, Mr Deputy Speaker. The member is reading his speech, and that is not allowed under Standing Orders."

MR DEPUTY SPEAKER: "There is certainly a restriction on members reading their speeches, but there is an equally specific restriction on other members drawing attention to the fact that some members may be reading their speeches."

JACK ELDER: "I didn't know that."

MR DEPUTY SPEAKER: "If the member did not know of it I am glad that he does now, so that he should not raise that matter."

MR ANDERTON: "It is not surprising that the member has been here for nearly 6 years and he does not know even that. The Government has failed to establish any need for privatising the control over public lands as the section proposes to do for marginal strips. What areas will be next for privatisation—national parks, reserves, and other conservation areas? As people say, there will not be much left to privatise after the Government has gone. I say to the member for New Plymouth that not much that has not been screwed down has not been sold already. Why should we believe that anything else will not be sold? I do not believe it. The Government would sell anything."

HON. PHILIP WOOLLASTON: "I raise a point of order, Mr Deputy Speaker. It would be out of order for me to describe what the member is doing, but at least he should be required to have some regard to a semblance of truth in the House. He is talking about selling and privatising marginal land strips."

MR DEPUTY SPEAKER: "Order! It is not a point of order to find that the remarks made by another member are not remarks with which one would agree. Members

have an opportunity to rebut if they want to, and to challenge the remarks made by other members, although the member who raised the point does not have that opportunity because he has already spoken."

MR ANDERTON: "I will not raise a point of order about the suggestion that what I am saying is not the truth. All I will say in reply is that the Government has an absolute mortgage in historical terms on breaching promises on every single matter that one would care to name. I can give the Minister a list that will take longer to go through than the time I have left."

"It seems to me that the Government is using the Bill as a cop-out to avoid establishing marginal strips before it sells off to State-owned enterprises vast tracts of Crown land and State forests. It will allow the Government to get the best financial return from the sale of State-owned enterprise assets, and it is a cynical, money-hungry move by a desperate Government. It is a total breach of faith with the public. When the State-owned enterprises were established in 1986 the Department of Conservation and the respective legislation made it quite clear that marginal strips were required to be established in all land sales. The select committee's addition to the Bill reverses that requirement."

"It seems to me that the new section 24AA in clause 15 indicates the Government's general intention to waive the requirement to establish marginal strips during its massive asset sale programme. If there is no such intention there is no need for the Bill. The new section 24AA in clause 15 replaces existing public notification objection procedures, and if waiving the establishment of marginal strips is to be as rare an event as the Government would want the public to believe there is no practical reason for creating the powers created under the Bill."

"Government members simper around the country trying to placate the conservation movement, saying that the Queen's chain is sacrosanct and will not be touched. The Bill gives the lie to that statement. It takes away fundamental rights in this country under existing legislation, giving the absolute right of access to public lands. The Minister's Bill repeals that legislation, and he knows it."

(*Hansard* Vol 506, page 1382)
HARRY DUYNHOVEN: "The New Labour Party member for Sydenham has been emphatic in his attempt to mislead the House. I tell him that at present there is no public access to those strips of land that have been set aside by that provision, because there is no access to them. The Bill provides the access.*[2] If the member, who seems to have been suddenly converted and has a belated interest in conservation matters, had had a genuine interest he might have attended the select committee as an observer. Some of us spent many hours on the Bill to find a workable solution."

(*Hansard* Vol 506, page 1385)
MR McCLAY: "I shall stop in a minute because I know that the Minister wants time to give assurances and to answer the very important questions raised—particularly those questions posed this afternoon by the member for Sydenham, the former president of the Labour Party, when he expressed the concern of many people about the public's continued access to assets owned by the people of New Zealand. New Zealand does not want to finish up in a position similar to that in Europe, where one has to pay to get on to land that the people own, anyway. I hope that the Minister will consider the issues posed by the member for Sydenham..."

(*Hansard* Vol 506, page 1386)
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."*[2]

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. 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 a 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."*[3]

"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.*[2] That is a fact, and the member was misleading or mistaken—I am sure that he was genuinely mistaken—in suggesting otherwise."

Changes to the Conservation Law Reform Bill

As Introduced 10 August 1989

Disposal
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.

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

Development
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.

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

Development
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
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
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.

Closing
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
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.

*[3] 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.

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.'

*[1] 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 by 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.

*[2] *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.