Rebuttal of

“The Queen’s Chain” by Alec Neill MP Waitaki

Bruce Mason
Spokesman
Public Access New Zealand Inc.

Tuesday, August 24, 1993

The paper titled “The Queen’s Chain” by Alec Neill MP provides an interesting, but incomplete, picture of the legislative development of the Queen’s Chain. However his contribution does the public of New Zealand a major disservice by the ill-founded denial of existing public rights of access over public lands beside the sea, lakes and rivers.

Mr Neill made an omission of reference to a series of early ordinances and regulations requiring the public reservation of waterside lands as New Zealand was settled. These had the same legislative effect as the later statutes Mr Neill cites. Successive Governors passed these ordinances after Queen Victoria's instructions of 1840 and prior to the establishment of provincial governments and later a central government. These ordinances establish that there were continuous government actions from 1840 to the present to establish a Queen’s Chain. Mr Neill's omission implies otherwise. In fact he claims that it is not a birthright derived from history but the actions of recent governments that the public should thank for the creation of any public rights of access.

It appears that Mr Neill and the government is intent on mytholising and knocking the reality of the Queen's Chain, and rights of public access, as a platform for privatisation of public assets. We are expected to accept proposed private control over marginal strips, and closures to the public, and be thankful.

Mr Neill's opening claim that the term 'Queen's Chain' is "often" used as legal justification by those claiming rights of access to public waterways is a fiction. All the non-government leaders in this debate know that it is a popular rather than legal term but that legal rights are derived from its legal components. The implication of Mr Neill's argument is that because the term ‘Queen's Chain’ is not found in law, then the concept, and rights of public access, do not exist. I wonder if Mr Neill would deny the existence of public hospitals now that his Government has renamed them "Crown Health Enterprises"?

Unlike Mr Neill, I am unaware of any active proponent for public access claiming that 'common law' rights of access already exist along the margins of all waterbodies in New Zealand. That would convey rights of access over all riparian lands, irrespective of ownership. The Trespass Act 1980 says otherwise. Instead we have a healthy provision of public lands beside our waterbodies to ensure public rights. The only "commentators" who are currently describing the Queen's Chain as a "myth" are those with designs on marginal strips, either for outright ownership, or private control via leases or licences.

Mr Neill's documenting of the different categories of Queen's Chain is useful in distinguishing between them. There are two broad categories-- those, like esplanade reserves, that are derived from private land, and those derived from lands of the Crown. As Mr Neill acknowledges that the origins of esplanade reserves are "quite different" from lands reserved from sale or other disposition under successive Land Acts (section 58 strips) and the Conservation Act (marginal strips). In the first instance private property rights are extinguished by the creation of esplanade reserves, and in the latter case there are no private property rights to be considered.

So why, when Mr Neill clearly records that marginal strips exist for the purposes of public access and recreation, should the public accept Government's current proposals for public rights being turned into privileges subject to the benevolence of private lessees holding trespass rights?

The most seriously flawed claim from Mr Neill's writings is that there are no rights of public access over section 58 strips and public roads. Section 58 strips (now known as marginal strips) and public roads provide the vast majority of the Queen's Chain. Mr Neill's claim appears designed to denigrate the worth of the Queen's Chain so that we, the public, will feel grateful for lesser offerings from private owners or occupiers.

While it is true that the Land Act 1948 did not provide express purposes or rights of public access over section 58 strips, this does not mean, as Mr Neill states, that rights of public access did not exist. There was an implicit purpose of public access, and no other purpose, derived from the proviso to subsection 58 (1). I have a legal opinion that concludes that the requirement to maintain "reasonable access" is for the purpose of public access. It is interesting to note that contemporary and analogous provisions in Counties and Local Government Acts were explicit in that it was public access that was being retained.

In regard to Mr Neill's claim about roads, the second largest category of Queen's Chain after marginal strips, it is a staggering misstatement to say that there are no public rights over them. True, there are no public rights spelt out in statutes because there doesn't need to be. Public rights of unhindered passage are centuries old and are to be found in a huge body of English and New Zealand case law. The 'law of highways', based on Court determinations, is a whole subject in itself. As Mr Neill is a real lawyer, it should be unnecessary for a 'tussock lawyer' such as myself to remind him that our legal system is based on common or case law modified, if at all, by statute.

It would be more productive of Government, rather than claim that the Queen's Chain coverage is incomplete and somehow worthless, to come up with a realistic means of completing coverage along the margins of all waterways. That is the challenge PANZ has put to all political parties this election year. National has so far offered nothing but privatisation and reduced public rights over the very extensive network of Queen's Chain that already exists. The incomplete nature of reserves coverage appears to be the only basis for Mr Neill's fallacious claim that "it should be remembered that hunters, anglers and others have no automatic rights of access to New Zealand rivers". What he is really saying is that because approximately 30 per cent of the sea shore, lakes and rivers do not have a form of public reservation along their margins, then the 70 per cent that do, somehow do not exist!

END