Queen's Chain

Marshall welshes on 'Queen's Chain'

Remember the headlines last year? —

"Government drops Queen's chain law change!"

On 27 October 1993, Conservation Minister Denis Marshall stated in a press release that he accepted the report of the Working Party he set up to study the proposed changes to the "Queen's Chain" in the Conservation Amendment Bill.

The Minister said that the Working Party had recommended that Clause 14 — which contained leasing and licensing provisions — be dropped, because the need for it has not been clearly demonstrated by the Department of Conservation. The Minister accepted this recommendation.

Mr. Marshall continued, "*I will refer the report to the Select Committee, and ask it to further investigate the problems identified by the Department of Conservation, and — as suggested by the Working Party, to look at other ways of solving the problems.* I note that the Working Party have already made some suggestions in this area" (our emphasis, and following).

"I would like to thank the members of the Working Party who have put many hours work into this issue. They have produced a constructive document, which I'm sure will help achieve our aim of maintaining and improving public access to the Queen's Chain," said Mr. Marshall.

Since that time the Planning and Development Select Committee has been hearing submissions on the Bill, on the Working Party's report, and John Blincoe's Queen's Chain Protection Bill. The committee split off what it considered to be non-contentious parts of the Conservation Amendment Bill and reported these back to parliament. The contentious 'marginal strip' provisions are still with the committee.

In *Public Access No. 4* we reported that DOC officials had put before the committee schedules of alleged difficulties with the current Conservation Act as justification for leases etc., with attendant trespass rights over marginal strips. The Department couldn't or wouldn't produce such information for the scrutiny of the Ministerial working party of which PANZ was a member. PANZ correctly predicted at the time that, after the working party had been disbanded, DOC would produce 'new' evidence to support leases etc.

The Department has now produced "for the benefit of the select committee exercise", "marginal strip problem cases" from Otago and Auckland. DOC states that, at the time of the working party's deliberations, it was not able to provide examples of activities on marginal strips, "not from lack of examples, but from a lack of information available." This gobbledegook confirms that the department promoted fundamental changes to the legislation, without evidence to support change.

Four cases from Otago were advanced as reason for leases over marginal strips, despite lack of certainty that structures and activities were in fact on marginal strips. One case is cited to be *adjacent to* a marginal strip. Two Otago baches are on a "seashore reserve", but with doubt over the actual status of the land. Another bach "*may* technically be on marginal strip".

DOC's Auckland Conservancy provides the bulk of cases—"Inspections by Conservancy staff have identified cases of *abuse or illegal encroachments* (our emphasis) by adjoining owners on 54 of them" [marginal strips]. It seems that DOC is intent on rewarding abusers of public property with legal occupancy rights. *The Department argued before the working party that the only way it can control and eliminate abuse and encroachment is to licence it!* Such a view ignores the fact that they already have the powers they need to stop private occupation and abuse of strips, if they so wish (Conservation Act, sections 36, 39, 44, 45).

Twenty-seven of the Auckland cases involve grazing of marginal strips, a situation common to most strips throughout New Zealand. In our view this is no reason to create trespass rights over public land. To create an ability to do so would destroy the primary reason for the Queen's Chain.

Another 7 cases are cited to be of duck shooting 'mia-mais' on marginal strips! So much for 63 per cent of DOC's 'proof' that the law needs fundamental change! Remaining Auckland cases involve a factory encroachment where there "has been considerable spilling and dumping of waste down the river bank", encroachment by a "multi-million dollar" garden centre which "is performing well" (the relevance of such information in relation to DOC's functions is unclear), encroaching fencing and buildings, and to allow a one-day fishing contest! For such reasons the department claims that it needs cart-blanch leasing and licensing powers over *all* marginal strips throughout New Zealand.

Within the 'new information' is a case of surplus Crown land being disposed of *before* a marginal strip was laid off— contrary to the requirements of section 24 of the Conservation Act. There is also evidence of DOC appointing adjoining owners as "managers" over marginal strips for the presumed purpose of excluding or controlling the general public and "to formalise grazing". PANZ considers such appointments are contrary to the statutory duty for managers (s 24H) to best serve the purposes of marginal strips, including enabling public access. PANZ believes that such abuse of statutory power is indicative of what will likely follow if an ability to issue leases and licences over marginal strips is granted to DOC.

DOC roundly lost its case for leases and licences before the working party. The same officials service the select committee. For many months they have been re-running their case before the committee. In October this year, PANZ appeared before the committee, to discover that the arguments that were supposedly 'won' last year, were being re-visited. This led to the following letter in the *Otago Daily Times* (October 25, 1994)—

> Your report (11.10.94) [on a] select committee hearing in Dunedin on Queen's Chain legislation omitted a key issue. I drew to the Planning and Development Committee's attention that before the last election the Minister of Conservation publicly accepted a Government-appointed working party recommendation that controversial proposals for leases etc. over marginal strips be dropped from the Conservation Amendment Bill (No 2). Such leases would create trespass rights over water margins thereby excluding the public from publicly-owned river banks and the sea shore.
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> However it has come to light that the Minister did not do as he promised in a press release (reported in the *ODT*, 28.10.93), *by referring the report to the select committee and to ask it to look at other ways of solving problems of private use on marginal strips.* Instead the committee had to ask that the Minister supply the report to it for consideration. It therefore appears that the report and its recommendations have no special status in the parliamentary process. All the matters resolved last year are now up for reconsid-

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eration. The government is in danger of being seen as breaking yet another promise, with last year's undertaking that it would not privatise the Queen's Chain merely an electioneering ploy.
Bruce Mason
Public Access New Zealand
(Member of "Queen's Chain" Working Party)

Denis Marshall, Minister of Conservation, replied:

"There is a simple answer to the issue raised by Mr. Mason on the issue of the Queen's Chain and the working party recommendation. I *may have* accepted the thrust of the working party's recommendation, but that does not bind the Parliament to a particular course of action. *The committee report cannot have any greater status than any ordinary piece of policy*, which automatically goes through a Select Committee before becoming law. At the time of the working party recommendation, the Bill was already before a Select Committee. That committee, in its deliberations, *may produce additional information I was not aware of at the time of the working party report.* I cannot interfere with the deliberations of the Select Committee or ignore the outcome of its process" (our emphasis).

The Minister did more than "may have" when he accepted the working party's recommendations. In the Minister's press release quoted above *he accepted the recommendation that Clause 14, allowing leasing and licensing, be dropped.* A 'new information' game-plan is evident.

The Minister did not dispute PANZ's contention that he failed to refer the working party's report to the select committee or to ask them to investigate alternatives to leases and licences.

Before last year's general election the Minister and Prime Minister led the public to believe that Government had backed off the controversial clauses and that it had the power to do so. Surely, as a Minister of the Crown, Mr. Marshall must have known at the time of his public assurances what the respective roles of executive government and select committees are? It is no use for him to now hide behind a select committee on which the Government has a majority, to avoid giving effect to well-publicised promises to the electorate.

In recent years there have been two full-frontal attacks by Government on the concept of the Queen's Chain. Massive public concern on both occasions, to the extent of becoming an election issue last year, indicates that if Government persists with privatising the Queen's Chain it will never be forgotten, or forgiven!

What you can do

- Write to Mr. Marshall asking him to stand by his acceptance of the working party's recommendations.
- Write to the Prime Minister, demanding that National's promises during the election campaign be honoured.
- Write to the news media.