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Queens Chain Update No. 2

Queens Chain Still Threatened

To Executive Members of Acclimatisation Societies, Federated Mountain Clubs, Forest & Bird Protection Society.

Introduction

The Conservation Law Reform Bill was reported back to Parliament on 13 December and the politicians, on both sides of the House, are claiming that the controversial Clauses have all been satisfactorily amended. Both Ken Shirley (chairman of the select committee) and Philip Woollaston have issued glowing reports claiming that the amendments will allay the public's fears. Many people now think the campaign has been won and we have been besieged with congratulatory calls.

Sadly we can not claim victory. Although many of our suggested amendments have been adopted (which we whole-heartedly welcome) there are some fundamental changes which are in many respects worse than the original Bill.

We am writing to you now to give you some information on the Public Lands Coalition's interpretation of the Bill, as amended, and to include news clippings and some of our correspondence with the Minister of Conservation. Consumption of this material will give you (*indigestion*) an in-depth understanding of the complexities of the Bill and its implications.

As we have not yet won greater protection for the Queens Chain, or unrestricted public access, we are faced with running another public campaign, from late January until Parliament resumes on the 20 February 1990. We expect the Conservation Law Reform Bill to be early on Government's agenda.

Our campaign to date has certainly achieved results. The Ministers and MP's have been besieged with letters from all over New Zealand from all sorts of people. Many of these people responded to the Ministers' replies pointing out inconsistencies between the Ministers' letters and the Bill. This resulted in three versions of their form letter replies to constituents.

Finally the Prime Minister stepped in and issued an extremely important press statement, see enclosed.

Editorially, the news media has been right on (our) side of this issue, with numerous strong editorials, lots of coverage in the papers, and national exposure on the 'Holmes' show and by an 'Insight' documentary on Radio New Zealand.

Prime Minister's Assurances

On 28 November Geoffrey Palmer gave an assurance that the Government had no plans to restrict public access to the Queens Chain and that ...."the Bill was meant to strengthen protection of the Queens Chain not the reverse."

The Prime Minister also said that if the Bill was not right when it was reported back by the select committee then further amendments would be made.

The PLC considers that the Bill as reported back does not meet these assurances and so we must insist that Government make further amendments in line with the Prime Minister's statement.

PLC Policy.
The Public Lands Coalition is continuing to press for:

1. Unrestricted public access to all Queens Chain land.
2. Establishment of marginal strips on all SOE lands, and at the time of disposal of any other Crown land.
3. Removal of ability for Minister to appoint private managers, and retention of direct State (DOC) management.

Commentary on Amended Bill (main provisions only)
This can be divided into two sections, the welcome and the unwelcome.

Welcome Changes

1. Crown Ownership is now certain.

Despite Government saying that controversy over the Queen's Chain provisions was based on an "outrageous campaign of misinformation" they have conceded, by inserting our recommended changes in the Bill, that our suggested amendments were necessary in order to ensure that Crown ownership of the Queen's Chain (the land, exclusive of improvements) is retained. We are now satisfied that this is the case.

2. Removal of ability to revoke and dispose of existing strips

The other most significant change for the better is the complete deletion of the offensive disposal Clauses. This secures all existing strips, however see # 8 below for **the bad news.**

3. Strips to be Marked on Public Plans

At the PLC's insistence, the existence of all new marginal strips are to be recorded on DOSLI's cadastral and other plans so that the public will always have ready access to official records establishing where legal rights of access exist. Previously it was proposed that strips would only be recorded on certificates of title for adjoining private land, requiring lots of dollars to search individual titles and legal skills to interprete them.

4. Exchange Provisions/Movable Strips

At the PLC's suggestion, a new provision has been added which provides for disposal of redundant strips for the sole purpose of exchange of land to create new practical strips. We suggested this to provide a solution (we do not claim it to be ideal) to the problem of rivers changing course but marginal strips not following. This should provide a mechanism for practical realignment of many existing strips.

However we doubt that the Government's proposed mechanism for movable strips by means of notations on certificates of title (still in Bill), being confined to new strips, is workable. The new provision may however pick up these cases.

5. Urban lands now require marginal strips

The ability to exclude setting aside marginal strips when urban Crown lands are disposed off has been deleted.

6. Easements

The power to grant easements over marginal strips has been removed from mangers and confined to the Minister subject to having 'due regard' to the purposes of marginal strips.

Unwelcome Changes or lack of change

7. Powers of closure over strips widened

Contrary to all the hullabaloo coming from Government, and the speeches in Parliament from members on both sides of the House, the changes to the Bill appear to widen the circumstances under which strips can be closed to public access and use.

The PLC sees *any* power of closure as highly dangerous and a complete departure from the total right of public access that is currently enjoyed under the Land Act. We are also pressing for the removal of existing powers of Ministerial closure under the Conservation Act (section 13), before they are suddenly applied across all existing and future strips. We are continuing to press for no restrictions on public rights, encouraged by Geoffrey Palmer's statement on this aspect.

To portray the new proposals as an *improvement* on existing public access rights, Government is now privately arguing that *no* legal right of access exists over the Land Act 'section 58 strips! This is utter nonsense, and contrary to the whole history of public administration since 1840.

The ability for managers to close strips 'temporarily for operational or safety reasons' has been removed. However the changed Bill provides for the Minister of Conservation, on the request of a manager, to 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." This appears to be a *requirement* on the Minister. It is unclear whether such closure requires conformity to section 13 of the Conservation Act (this provides for closure of conservation areas, including marginal strips, only in conformity with a management plan or to the extent only of the conservation of any natural or historic resource, or for public safety or emergency). Regardless of who's interpretation is correct the change is from 'temporary' closure to unspecified periods including permanent closure. Needless to say 'asset' is undefined in the Bill.

Why the Minister needs any of these powers on Conservation Areas in general escapes us. He doesn't have, and to our knowledge hasn't advocated such powers over national parks. We think that if genuine safety/emergency conditions exist it would be better to place discretion for closure with the Police, in the same manner as for public roads, rather than rely on the judgement of a politician, or inevitably the local official he delegates his power of closure to. If conservation requirements are so important on some marginal strips that the public must be excluded, then special reserves/sanctuaries would provide the best protection for natural values, and the best assurance for the public that they are not being excluded for spurious or private reasons.

8. <u>New waivering or early disposal provision</u>

The Government's 'hidden agenda' of designing this legislation for the benefit of SOE's and its asset sale programme is laid bare by the introduction of an entirely new disposal clause. New section 24AA allows the Minister, by notice in the *Gazette*, to declare any Crown land to be not subject to the requirement to establish marginal strips pre land disposal.

We have long suspected the SOE programme has driven this legislation, especially pressures for disposal/waivering, and the appointment of managers. Landcorp's game plan appears to be to avoid having strips established in the first place, and if unsuccessful in this, to have managerial powers over the strips so that they effectively become private land, in the same sense that pastoral leases are. For the Government's part it is in its financial interest not to establish marginal strips around prime coastline, lakes etc on land intended for transfer to SOE's. The absence of public strips is sure to be reflected in the sale returns to Government. It appears this has been intended by government since the origins of this legislation some two years age. Their are strong suggestions that the already agreed asset values on land intended for transfer to the SOE's excludes any allowance for marginal strips being taken out. This tends to be confirmed by Treasury's instructions to DOSLI for survey of SOE lands. We are reliably informed that the definition of marginal strips is specifically prohibited, despite as we have established, the extra cost of surveying these to be relatively minor.

In a piece of deception Government has seen fit to delete the obvious disposal clauses, but then pick up the exact same wording that was to justify disposals and put this into a new waivering or pre-disposal clause. From vibes we have picked up in Wellington we believe that it is Government's intention to make the waivering of the establishment of marginal strips on SOE lands, other than Electricorp, the general rule rather than the exception. This would rob the public of all future assurance of access to riparian lands. This follows the uncertainty of public access rights to Forestry Corp lands created by recent passage of the Crown Forest Assets Act .

9. <u>Appointment of managers</u>

This is an area that has received little public attention relative to the land ownership, disposal and access issues, partly because most fair-thinking citizens assume that Crown ownership assures public access and control of uses harmful to both access and conservation. Unfortunately such a simple view of the world is unlikely to be the case. We base this comment on our long experience of trying to effect reforms on pastoral leases, where the Crown owns the 'land exclusive of improvements.' The lessees have considerable equity in these areas due to proprietary interest in the improvements to and on the land. Such improvements include obvious surface structures such as buildings and fences, crops, pasture and trees, but the less obvious subsurface asset of induced soil fertility.

We commented to Government that if they are determined to go ahead with appointing mangers with the right to create 'improvements', a very narrow definition should be inserted into the Bill so as to truly retain Crown ownership of strips. However no definition is provided. Therefore any asset or improvement

is now able to be established on strips, where up until the present such establishment of private interests was forbidden by law.

Administrative costs of 'marginal strips' to the Crown have been negligible, if nonexistent to date. We feel that concerns over the costs to DOC of weed and pest control, fires etc have been trumped up to justify the Crown abdicating its responsibilities and to appease Landcorp. If the Government is serious about these costs, there are simple legal remedies for passing these costs on to adjacent landowners in the same manner that Counties have passed on such responsibilities for legal roads. We have pointed this out to Government. It is not necessary to create legal interests in the land itself or to create legal rights of use or ability to obstruct the passage of the public to achieve these ends.

The amended Bill now allows the Minister ('may' replacing 'shall') to appoint adjoining landowners, or some other 'more suitable' person, as managers.

An inconsistency in the Bill, being an obvious pro-SOE clause, is that the Crown will continue to be manager of strips around controlled lakes and reservoirs. Electricorp doesn't want to deal with a multitude of private managers of strips, especially as its generation operations may damage the shorelines.

The manager of a strip may make improvements, including the planting and harvesting of crops and trees, or as allowed by any agreement between the manager and the Crown. So the sky is wide open for an entrepreneur to influence a Minister or the local officials that will likely be delegated the power to enter into secret agreements. This is despite managers having to obtain the written consent of the Minister before making 'significant changes' to management of the strip and before erecting any 'significant improvements' to or on strips. No definitions of the latter terms are included in the Bill.

If the Crown does wish to resume management, it will be liable to pay compensation for authorised improvements and for 'reasonable administration costs'. We anticipate that it will be an exceedingly rear event for any Government to resume management.

A new clause, which arose from the PLC's suggestion that offence provisions should apply to *all* persons who damage strips or obstruct public access, has been inserted. If a manager 'knowingly damages' a strip or knowingly uses it for any purpose contrary to the purpose of marginal strips or any ministerial requirement. However obstruction of public access has not been listed as an offence.

The reality with punitive measures however is that it is often very difficult to obtain conclusive evidence of an offence that will lead to conviction. It will be doubly so when the alleged offender has broad rights of use that are capable of liberal interpretation. There also has to be the political and bureaucratic will to pursue prosecutions. Historically there has always been official preference for 'education' and maintaining 'relationships' between the Crown and its tenants/clients, even when compelling public need exists for legal remedies.

The PLC, while commenting to Government on aspects of these proposals has consistently opposed the whole notion of private managers over marginal strips. The present 'arrangement' of informal use by adjoining farmers, without any legal rights bestowed on private individuals, has worked well. We all know of inappropriate activities on the Queen's Chain, this being a reflection of lack of statutory emphasis on conservation objectives for many of these lands. This has now been rectified in the Bill. If full Crown ownership and control is retained, as we advocate it should, then there will be no practical or legal obstacle in the way of DOC undertaking conservation works, including the exclusion of stock as required. Even if DOC continues to be under-resourced and appears at times unwilling to act, the purposes of marginal strips set out in the Bill will provide them with a mandate for action. There are enough of our interests around to continually remind them of their responsibilities. This has to be a far superior arrangement than relying on private individuals, with potentially considerable vested interests in the strips, to somehow put the public purposes of the strips ahead of their own affairs.

Resource Management Bill

As an interesting reflection on the marginal strip provisions in the Conservation Law Reform Bill, the Resource Management Bill appears to strengthen the traditional role of another part of the Queen's Chain—Esplanade Reserves. These are created compulsorily when private land is subdivided, creating Queen's Chain where they do not currently exist. On our first reading, it appears that the purposes are sound, they remain as reserves under the Reserves Act, an existing provision to waiver their establishment has been removed, and their is no ability created for the establishment of private interests or managers, and no ability to close them to public access. Just what we should be seeing in the CLR Bill! The obvious why? The Crown seems only willing to perpetuate the Queen's Chain as we have

historically enjoyed it on private lands, not its own lands. The temptations arising from the asset sale programme are too great.

In the New Year its up to all of us to convince Government that the political risks of pursuing its present course are too great. As the editor of the Southland Times wrote recently "...it is an absurd piece of political miscalculation. No Government would have a hope of circumscribing a right cherished by the large body of New Zealanders who use the lakes, rivers and beaches regularly for recreation. To attempt to do so, even in a camouflaged way, was foolish and the electorate will not forget it." It could be added that if Government pursues its present course they will never be forgiven.

Best wishes for your holidays; come back refreshed, spiting fire and ready to do battle!

On behalf of the PLC,

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