PUBLIC LANDS COALITION

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11 October 1989

Hon. Philip Woollaston
Minister of Conservation,
Parliament Buildings,
Wellington.

Dear Minister,

CONSERVATION LAW REFORM BILL – MARGINAL STRIP PROVISIONS

It was good to meet with you on 14 September and to hear your assurances that there is no intent for the Crown to relinquish its ownership of marginal strips. However we remain concerned that the Bill does not, in our view, remove this beyond all doubt. The coalition is also disappointed that your press releases continue to stress that the Bill provides stronger protection for the Queen's Chain than the current legislation.

Indeed you have reacted sharply to our coalition's criticisms and doubts as to the intent and adequacy of Clause 15 of the Bill. and have publicly accused the PLC of being 'outrageously wrong.'

We do not believe your statements are supported by the wording of the Bill and existing statutes, and we are concerned at your attack on us.

Because of the direct impact the proposed changes would have on many thousands of outdoor recreationalists, we are obliged to publicly counteract several of your claims as to the content of the Bill. What follows is our draft response to your statements which is intended for wider distribution. A supporting analysis of the Land Act, Conservation Act and Bill is appended.

I must point out that the last thing the PLC member organisations wish to generate is a public scrap between yourself as Minister of Conservation and ourselves. However because of the magnitude of the proposed changes we are obliged to publicly pursue this matter.

I would appreciate your consideration of the draft commentary below and forwarding of your comments and supporting official opinion before we proceed with publication. If areas of present disagreement can be quickly resolved the PLC would welcome such. Please send or fax your comments directly to me.

DRAFT PLC RESPONSE

The Conservation Law Reform Bill provides a consolidation of two existing provisions for the establishment of 'Queen's Chains' along New Zealand's coasts, lakes and rivers. These are Section 58 Land Act 1948 and Section 24 Conservation Act 1987. It should be borne in mind that S 58 and its earlier equivalents go back to the time of colonial settlement. Marginal strips (S. 24) are very recent and have no track record of fulfilling the primary public access purpose of the Queen's Chain. Many thousands of kilometres of coastline and river bank are protected by S. 58 strips. We only know of one marginal strip having been established.

The PLC believes that Ministerial replies to the media and to MPs, in response to letters of concern from constituents over possible loss of public ownership and control of these strips, are not supported by the contents of the Bill. We append a comparative analysis of the two affected statutes and the Bill. Our commentary below is referenced to this analysis.

<u>Minister's Statement</u>:

1. "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 Conservation Law Reform Bill does not...transfer marginal strips to private ownership. In fact the Bill expressly and explicitly reserves them to the Crown". (Minister's press statement of 8 September 1989).

<u>PLC Response:</u>

1.1 Crown ownership of existing S 58 strips is not in doubt. However the Bill proposes disposal of the land intended to become marginal strip as a prerequisite to the creation of strips. Also marginal strips can involve holding land, including private land, for conservation purposes. *See Analysis: Characteristics 3, 16.*

1.2 The Crown's duty under S. 58 to retain ownership of the land, is repealed by the Bill and replaced by the recording on Certificates of Title under the Land Transfer Act, without payment of a fee, for the land *so transferred* (subject to the marginal strip provisions of the Bill). This is a disposal of ownership by way of gift.

1.3 Whereas S.58 expressly "reserves (strips) from sale or other disposition", no equivalent provision exists in the present Conservation Act or the Bill. The latter only 'reserves' limited rights for the Crown to intervene in the private management of marginal strips. *See Analysis: Characteristic 3.*

Minister's Statement:

2. "The Land Act 1948 (Section 58) gives the Minister of Conservation complete discretion to waive the requirement for a marginal strip. It provides for the provision of a marginal strip along the banks of all rivers and streams having an average width of not less than 3 metres '<u>unless the Minister of Conservation considers it unnecessary to do so</u>'." (Minister's letter to the Editor, Otago Daily Times of 18 September 1989).

PLC Response:

2.1 The Minister does have an existing discretion but it is not complete as claimed. It is confined to rivers and streams and does not allow relinquishing requirements for strips along the sea coast or lake shores. The Minister may only exercise the discretion at the time establishment of a strip is being considered, not after a strip exists. Historically the discretion has been rarely exercised. *See Analysis: Characteristics 11-13.*

Minister's Statement:

3. "The new proposals provide a stronger protection of marginal strips than does the present Land Act. In future, reclassification [revocation] **can only occur if the strip has little or no conservation or public access value, or if such values can be protected in some other way. This is a significant improvement."** (Minister's press statement of 8 September 1989.)

PLC Response:

3.1 There are no provisions within the Land Act which allow revocation of S. 58 strips. There is provision for allowing reductions in width from "not less than 20 metres" to a minimum of 3 metres, but this does not derogate from the requirement for strips.

3.2 The provisions of the Bill amount to a serious reduction of existing public use rights and land use control. Proposals, in addition to the ability to dispose of strips, include—

- **Loss of public objection procedures** to revocations and waiverings. *See Analysis: Characteristic 19.*
- **Loss of direct Crown management and control** over strips by the appointment of adjoining land owners to be managers as of right on request, and other Ministerial appointments of "suitable persons" (except around controlled lakes and reservoirs). The Crown can only become manager if management is resumed, but is liable to pay compensation for improvements and manager's administrative costs. Currently disposition of any interest in the land is specifically excluded by S. 58 and the Conservation Act. *See Analysis: Characteristics 24, 20, 30, 35.*
- **Managers legally making improvements to strips**, including crops or trees, and without Ministerial approval (only consultation) make significant changes to

management and make or erect significant improvements. All of which could severely impinge on conservation values and the physical availability for public access. As a matter of policy, informal use of S.58 strips by adjoining landholders has been permitted but not at the expense of the Crown directly intervening where necessary for conservation reasons or to ensure unobstructed public access. The Conservation Act allows a wide variety of uses and developments on marginal strips (but not on S. 58 strips), however due to the almost total absence of marginal strips there is no track record of such authorisations. *See Analysis: Characteristic 33.*

- **Erosion of the New Zealand tradition to right of unimpeded public access** (S. 58) by creating a discretion of closure ("for operational or safety reasons") with private managers.

  A discretion of closure by the Minister, on marginal strips alone, was first created in the Conservation Act 1987, subject to accordance with management plans or for public safety and emergency reasons. Due to the almost total absence of marginal strips such situations have not arisen. If the Bill's provisions are passed the manager will be able to close them for operational reasons. *See Analysis: Characteristics 36, 37.*

3.3 The Bill, by allowing revocation of marginal strips if the strip at some time is considered to have little value for conservation and greater productive value, ignores potential higher conservation values through future habitat restoration —often the only remaining niche for coastal and lake shore wildlife many of which are in a precarious state. The option of immediate species management/intervention as the need arises will be lost to the Crown. Purchase or conservation agreements would need to be negotiated first. The Bill's criteria for revocation are an improvement on the Conservation Act, but not compared to the inability to revoke under S.58 Land Act. *See Analysis: Characteristic 18.*

3.4 If there is no intention on the part of Government to dispose of Crown ownership, there is no need to allow revocation if conservation or public access values can be protected in some way other than by ownership. The 'other ways' are unspecified in the Bill, but could include covenants on Certificates of Title, easements, or Walkways —all costly in terms of time in negotiation, recording, on-going administration, and legal expenses.

3.5 Varying conditions and rights of use will cause erosion of the New Zealand tradition of unimpeded access to most of our coasts and shorelines. Uncertainty of access along all strips, in the minds of the public, will provide a major deterrent to use. *See Analysis: Characteristic 18.*

3.6 The proposed Ministerial powers to issue 'reasonable' requirements or restrictions do not provide any certainty that such requirements would survive challenge through the Courts. As title holder the manager would have the prevailing interest in

the land. Attempted further impositions by the Minister, after failure to establish adequate restrictions at the time of managerial appointment, would most likely be deemed to be unreasonable. The only other remedy open to the Minister is to resume management. This would be an extreme event requiring political courage to interfere with private property rights —a most unlikely circumstance even if there was a willingness to meet the cost of compensation for improvements and administrative expenses. *See Analysis: Characteristic 28.*

The above provisions in the Bill create private property rights where none existed previously —the reverse of the present situation where the Crown's jurisdiction and judgement is absolute. The PLC cannot agree that the Bill's provisions are an improvement.

I hope that this letter will help in finding common understandings leading to satisfactory resolution of the central issues in the way of general acceptance of.changes to the Conservation and Land Acts dealing with the Queen's Chain.

Yours faithfully,

Bruce Mason,
PLC Researcher.