

Transcript

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Item CONSERVATION LAW REFORM
BILL

Programme 2YA - SATURDAY - 9.10AM

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ANNCR Conservation is now the issue of the moment. The Conservation Law Reform Bill got it's third reading in the House this week. Conservation Minister, Philip Woollaston - good morning.

WOOLLASTON Good morning.

ANNCR What's the guts of this Bill?

WOOLLASTON Well the Bill does a number of things. Ah, it um, rearranges the whole process by which we have citizen input into ah, conservation issues. It ah, replaces a whole host of conservation quangos with a new, more integrated structure, which will allow, I think, a better ah, and more orderly citizen input into conservation policy. It also rearranges the, ah, the um, Fish and Game Council, or the Acclimatisation Society and the Fish and Game Council, which have ah, again a more modern structure and ah, will involve perhaps, less overheads and ah, and make sure that the money which is raised from people who catch trout and such like things is spent where it ought to be and to make some changes to the marginal strip provisions. That is, those, those provisions which, under which the crown keeps the Queen's Chain as it sells off any crown land.

ANNCR So it's a generally tidy up of a lot of things that have been messy in the conservation area and I'd like to talk to you about the Queen's Chain, - that strip of marginal land, now if I may. And say good morning to Bruce Mason of the Public Lands Coalition?

MASON Yes, that's right. Good morning, there, Kathryn.

ANNCR What is your concern about the Queen's Chain provision within this Bill?

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MASON Our concern is that we see it as a fundamental attack on the private, on the public's existing right of access to water bodies and in many respects we see the passage of this Bill at this stage as the worst possible birthday present New Zealanders could ever receive on their 150th anniversary.

ANNCR Well, let's take that point up. How is their right of access being limited?

MASON It's being limited, because the Bill repeals the major provision for the Queen's Chain, which is under the Land Act. There has been provision since our first settlement in 1840, progressive provisions. Currently it is a section 58 of the Land Act. It is repealing that and all the strips that have been created over the years, suddenly become marginal strips subject to the Conservation Act. And there are totally new criteria of

ANNCR Of - hold on - are there fewer strips now? Will there be fewer strips under the provisions of the Bill?

MASON Um, no. The existing ones will become marginal strips. But the strips will physically exist, wherever the strips governing the public use and the management of them have drastically changed.

ANNCR Mr Woollaston, your view first of all, on whether the right of access will be limited under the provisions of the Bill?

WOOLLASTON No, the Bill actually does the opposite. Ah, the

Land Act says the strips shall be reserved from sale for the purposes of access, but it doesn't actually say in the law that the public have any right of access to them and that, therefore, is something which is in the gifts of the Department of Conservation – it used to be the Department of Lands – ah, any public right of access was at the pleasure of the Department. The Bill, this Bill, says that the public have a right of access and they can only be – the strips can only be closed for public access where there is public danger, or where there is a high fire risk. So it actually stipulates when the public may be excluded.

MASON With respect ...

WOOLLASTON I'm sorry, if I may finish – the, it stipulates that the public may only be excluded temporarily for reasons of public safety or at times of high fire risk and ah, that does give a statutory guarantee of access at other times.

MASON Well I will have to contradict you totally, Minister. I'm afraid this is one of the biggest myths this government has perpetrated against the people of New Zealand. You are claiming that there is no existing right of access on the Queen's Chain at present.

WOOLLASTON No, no, no. I'm sorry – you misheard me there. What I said is that the existing law, the old, the Land Act, does not given any statutory guarantee of that right.

MASON Well that's the same ...

WOOLLASTON ... the right - no, no, no. Pardon, I repeat what I said. The public have the right only at the pleasure of the Department of Conservation or, it used to be the at the pleasure of the Department of Lands that is the legal situation ...

MASON No, that is not the legal situation, Mr Woollaston and I have legal opinion before, which says totally the opposite. I think we have to put this whole Queen's Chain thing into perspective and to a historical perspective - because Mr Woollaston and the government are presenting this Bill as if it is the base line. It is the starting point and in fact we have to go back to 1840, when Queen Victoria issue instructions to the then Governor Hobson, that he was directed to lay off land - set aside land for recreation and the amusement of the inhabitants, along the sea coast and in the neighbourhood of navigitable streams and she specifically instructed Hobson that we do strictly enjoin you and require you, that you do not on any account, or on any pretence whatsoever, grant, convey or demise to any person or persons, any of their land so specified as fit to be reserved, nor permit or suffer any such lands to be occupied by any private person for any private purposes.

WOOLLASTON Yeah, I heard Jim Anderton make that speech, ah couple of days ago. Um, and ah, but, ah - and it's become a rather partisan political debate I think for that reason - but I want to say that ...

MASON ... oh look, Minister, we have - we must pursue

this legal matter on the

WOOLLASTON (talking over the top of Mr Mason) ... yes, well if I may respond to it, Bruce. If you, if you actually look at what is in the law, it is a very long way from what Queen Victoria said. The law, under the Land Act, which I have just had amended in parliament, is very specific. It doesn't apply to all lands, it only applies to land that is administered as crown land under the Land Act. It doesn't have that prohibition on, on selling any marginal strip any Queen's Chain, which Queen Victoria clearly envisaged, because that had been removed. The Land Act, which has just been changed says very clearly that the marginal strip shall be reserved for sale unless the Minister of Conservation thinks it's unnecessary to do so. There's no, no guidance as to how that judgement is made and in the past, marginal strips, or Section 58 strips, have not been taken in a lot of areas as you are aware. What, what this Act says, what this new law says, is that the only circumstances under which the Minister of Conservation can fail to take a strip, are if it would be of no use either for public access or for public recreation or for conservation purposes.

ANNCR But how can you define what will be of no use, Mr Woollaston?

WOOLLASTON Well, the only, the only situation I can think ah, off hand, where that might apply, is where for example, part or all of the marginal strip would be at the top of a very high bluff and there

are some situations where there's, there's physically no possible means of access.

MASON Well, why don't you make the strips wider than twenty metres, Minister?

WOOLLASTON Well, - I'm sorry - if I can finish answering Kathryn's question, Bruce.

MASON Well, you've not allowed me to finish the legal question

WOOLLASTON (talking over the top of Mr Mason) if I could finish answering Kathryn's question. The only circumstance I can think of, is where it would be physically impossible to get access to the river from the strip, because there are high cliffs or it would be physically impossible to get access along the river because of high bluffs.

ANNCR Well, let's take Mr Mason's point then. Why not in that case make the strip make the chain wider, so that you can get public access in those areas.

WOOLLASTON Oh, um - it's, it's very easy, to ah - in that case making the chain wider wouldn't give public access. Um, making, making the strip wider wouldn't, wouldn't help at all, because what I'm saying is that where there are bluffs and cliffs ...

MASON Well, you have wider strip that goes round the top of a cliff or an obstruction, as is possible currently under the Lands Act in which you have specifically repealed. The Minister ...

WOOLLASTON ... Bruce, if I can - I would like to answer one question at a time. The question is why not make it wider to cope with a situation where the strip is physical separate by reason of cliffs or bluffs from the river. The answer, the answer to that is that making it wider, as a strip wouldn't help because that - because the wider strip would be just as divorced from the river. The solution there is a simple one. And it is to take a reserve, which allows the two bits of strip above and below to be linked up and that's often done. There are many means of doing it, but it's not strictly a marginal strip, because it's physically separated from the margin of the river.

ANNCR Wouldn't it be simpler, Mr Woollaston, just to have a blanket provision of that Queen's Chain everywhere instead of having to worry about what may or may not be useful?

WOOLLASTON Ah, yes, but it would lead us into some silly situations, that's all. That, I mean that the old, the old Act left it entirely up to the discretion in theory of Ministers, but in practice of officials and ah, Bruce, who's researched this area quite a lot and knows a lot about where there are strips and where there aren't strips actually was the person, the person who, I think, initially drew it to my attention, that, that the performance had been very uneven and in some of the old land districts, you get a very good marginal strip system, Section 58 strip system, and in other land districts you don't because there was, there was a Commissioner of

Crown Lands there at the crucial time, who didn't really think they were necessary and, and what this Bill does, it ensures that it can't depend on the whim of an official or a Minister as to whether they're taken or not. They have to be taken, unless it can be demonstrated - and that means demonstrated in court - that there wouldn't be any point in taking it, because it wouldn't give physical access to the river or have any recreational value.

MASON Mr Woollaston, I'm afraid you've gone off on a tangent. We must return to the matter of existing legal rights. That is absolutely essential an understanding of this discussion. You have stated that that under the Land Act if you look at public roads, you cannot even find what a definition of what the purposes

WOOLLASTON ... that's right

MASON ... of what a public road and yet everyone in this country, knows what a public road is for and the courts have upheld that the public have the absolute right to pass and repass on public roads at all times

WOOLLASTON ... no roads can be closed.

MASON ... ah, look that is a separate provision, Minister

WOOLLASTON ... no, no, roads, roads can be - the public can be excluded from public roads, it happens quite frequently.

MASON Not walking - there is walking access at all times, Minister.

WOOLLASTON Yes, no, no. I'm sorry that's not correct, Bruce,

you're, you're - if you think about it, you think of the number of occasions when you see roads closed off by the police for reasons of public safety, where, where there is - and it's very necessary that they be so - or where there has been, where there's an armed defenders incident - where there is a gas leak, where there are floods. There are all sorts of emergency situations in which roads can be and are closed.

ANNCR Now let's take up Mr Woollaston's point, Bruce Mason, you do accept that the government has certain powers to close roads for matters of public safety, why not accept their responsibility to look after things like the marginal strips in this instance in this debate?

MASON Because the government does not have the power to close roads now. The police do, local authorities to do

WOOLLASTON Civil Defence.

MASON Right. Now they're completely ...

WOOLLASTON (talking over the top of Mr Mason) ... any authority does, the Ministry of Transport does, the ...

MASON ... excuse me Minister, look I am representing a significant area of the public interest are you prepared to listen for a change?

WOOLLASTON I, I am listening, Bruce, but I do, I do think I should be allowed to respond.

ANNCR Indeed. Please carry on with your point,

please, Bruce Mason.

MASON The point is that there is an absolute, unless the road is closed and there are rights of appeal to a Planning Tribunal, but there is an absolute right. There is any amount of case law for road. Now, Section 58 strips under the Land Act are the equivalent provision. It is not specifically set out in the law that there is an absolute right of public access, but my legal opinion is that the courts would uphold that right. Now, you are replacing that with a privilege. A discretion in the hands of yourself or your officials. Now, that is a fundamental change.

ANNCR Can I get your reply to that Mr Woollaston?

WOOLLASTON Yes, yes, certainly. Ah, I'm afraid, Bruce, that you have misunderstood. I think you've got it back to front. At the moment the Section 58 strips are exactly like the roads. There is nothing in the law that says the public have a right of access, there is what you might call a common law prescription which protects that right of access, but it is a right of access that can be withdrawn, under undefined circumstances. Obviously there are circumstances in which the public have been kept out of Section 58 strips, just as there are much more often circumstances in which the public road are kept off the roads, off certain areas of road. Temporarily, for reasons of safety, for other reasons from time to time.

MASON (talking over top of Mr Woollaston) There is

only one existing provision now Minister, either under the Conservation Act, the marginal strips or Section 58 for the public to be excluded and that is under the Forest and Rural Fires Act, Section 32, which already applies.

WOOLLASTON I would like to answer the question because it does need an answer that that's a red herring, because the forests aren't actually included under, under the Land Act at all at the moment, and that's another question that I will come to in a minute, but the, the - at the moment there is no right in statute that says the public can be there. There are circumstances in which the public have quite properly been excluded from marginal strips, Section 58 strips, just as they are from public roads from time to time. Now, what we have done, is we have said that in the law, that those, that right of the government, or of government agencies, or of public agencies, to exclude the public has limits to it. And we have given those very tight limits, so there is now a much - there is now a statutory guarantee that the public can be there at all times unless there has been declared to be, by me or my successor, a public, a public emergency of some sort, or there is a high fire risk in a forested area as covered under section 32. Now Bruce, has touched on an interesting point, though, because the, the law at the moment, the section 58 of the Land Act, only applied to crown lands under the Lands Act, which meant there were nor marginal strips in forested areas which might be said, unless they were first declared to be

crown land. Sometimes there were, sometimes there weren't. It meant for example that there was no legal possibility of creating marginal strips in the state forests, when the management and cutting rights of those forests are sold, because the land isn't being sold. What this Bill does, it ensures that any lands of the crown are brought into that regime and it ensures that, when the cutting rights to those forests are sold, there will be margin strips created there and I think that is another great public benefit of this legislation.

ANNCR We're not going to get agreement between you two on this particular issue, I would like to move to the issue of disposing of these marginal strips. Disposing of parts of the Queen's Chain. Now you, will have the power under the Bill to do that, Minister?

WOOLLASTON No, no, no. The, Bill as it was introduced, and Bruce quite properly raised public concern about that - had a power of disposal and acquisition, which ah, was, was put in there principally to, to deal with the problem where marginal strips are now not related to the rivers that they were once adjacent to, because that's happened where rivers have moved their course considerably. Um, the ah, that created a perception - and I think it, it got Bruce going because he felt that there was a plot to actually sell off the marginal strips, um - now I, I wasn't too happy with how that was worded either ...

ANNCR ... are you saying there's no way that these

strips can be sold off at all?

WOOLLASTON No, no there's no way. What, what there's been been, that's been replaced with a provision which allows an unusable marginal strip to be swapped for a usable marginal strip.

ANNCR What's a usable, versus an unusable one?

WOOLLASTON Well, ...

ANNCR ... like the Bluff for example, you said before ...

WOOLLASTON Well no, ah that is possibly an example. There's a better one though. One of these Canterbury rivers that move around a lot, ah, might for example have changed its course totally and there's - what was a marginal strip is now high and dry in the middle of farm land, doesn't give any access to the river - it is not possible under this Bill to swap that for the equivalent strip along the river. So it can only be done by a swap, and that swap can only be done if it's going to actually improve access to the river or access along the river. But there's no means of disposing of marginal strip at all in the Bill now and it's a much better Bill for that.

MASON I'd like to comment there. I acknowledge that that disposal mechanism has been replaced, because there was just massive public concern over that. However, what is it being replaced by? It's being replaced by another provision that's been put in, subsequently into the Bill, allowing the waiver. Initially that was to be a total waiver, so it would allow officials or yourself to avoid creating marginal strips when any lands to the crown are

disposed of to SOEs. Now there are ...

ANNCR ... can I but in there. You're talking about a waiver. You're talking about a situation where no marginal strip exists.

MASON That's correct ...

ANNCR ... and the Minister has the power not to create it?

MASON Not to create it. You have to keep in mind, these strip's normally created only when the crown land is disposed of.

ANNCR So the Minister has the power to say, no we won't put a marginal strip there, you are saying?

MASON Yes, he initially had introduced the power that would have a total discretion. That has been narrowed, again because of objections, narrowed to just a situation in rivers and streams, where he has no waiver, however it's been bounced - it's a case of give on one hand and take on the other.

ANNCR Mr Woollaston, can I get your response to that?

WOOLLASTON Yes, yes. The, ah, - as I - this is touching on something that we have already, we've already mentioned. But as I said before, the existing law says that the marginal strip will only be taken if, if the Minister of Conservation thinks its necessary to do so. To face that around(?) It will be taken unless he thinks it's not necessary. It doesn't say how that judgement should be reached

at all. Ah, what we've done here is said - is stipulated what grounds I can consider it unnecessary for and that is if it would be of little or no value for conservation purposes, for public access, or for recreation and those purposes can be better met another way.

ANNCR Now Bruce Mason, said before that he said that he thought there was a plot to sell it to the state owned enterprises.

MASON That's right.

ANNCR What's this plot?

MASON Well the plot is that the whole government's asset sale programme and the programme to transfer land from the crown to the SOEs and in due course to sell the SOE land to the private sector, that has driven the so called reform of the marginal strip legislation. Little else. Conservation and the protection of public access have been second on the agenda, and the proof of the matter is that this legislation ...

ANNCR Can I interrupt, why should the state owned enterprises want these marginal strips?

MASON They don't, they don't want them. Well, some do, some don't. But Landcorp in particular, and to a lesser extent, Forestcorp, do not want them. They lobbied government very hard so that they'd be exempt from the existing requirement to establish these strips and the proof of the pudding is in some Cabinet state owned enterprises committee minutes that I have before me now, that are dated the 9th March 1980. The topic was marginal strips,

objectives and options. It was chaired by Richard Prebble. Mr Woollaston was also present as a ...

WOOLLASTON 1980?

MASON 1988.

WOOLLASTON Oh '88.

MASON And that was, that Cabinet committee was directing this reform and it directed officials and the State Services Commission to actually review those matters of objectives and options and invited yourself, as Associate Minister, to deal with the Associate Member of State Owned Enterprises. Now, that committee came up with some startling information and it was a State Services Commission paper of the 10th June 1988, and they identified two major problems for all the SOEs, where no interest in a marginal strip could be granted and that a marginal strip cannot be disposed of. So they perceived that as an existing problem. And further, that they ...

ANNCR ... can I stop you there. Was that lobbying successful, Mr Woollaston?

WOOLLASTON No it certainly wasn't and the result of that is in the legislation that we have before us. Certainly at the time when, when the legislation, when the first Conservation Act was being produced and the marginal strip idea was created in that legislation, yes there was very lobbying from - particularly from Land Corporation, as Bruce has pointed out. But they wanted to

actually retain the riparian rights to all the streams and they wanted to be able to on sell those riparian rights I think. Now, that, that view was rejected then. They came back and said there were certain difficulties and that there were, the State Services Commission did report, yes. But that report did not find it's way into the legislation. The fact that various officials came up with certain views is not a matter to attack this legislation on, because if you look at the legislation you will see it doesn't reflect those views.

ANNCR Given the fact though ...

WOOLLASTON ... they can get an interest in the marginal strips.

ANNCR But given the fact though, that you have the power not to create to marginal strip where it doesn't exist, and that could coincide with an area where a state owned enterprise wants that land, there is the potential there, for them indeed, to get the land and not to have to put the public strip in.

WOOLLASTON That's why I insisted that the qualification go into the new legislation, which isn't in the old one. That is, that, that it has to be able to be demonstrated that the marginal strip would be of no value for conservation.

ANNCR And is that a sufficient safeguard, Bruce Mason?

MASON No, it isn't because times have changed. In the past there wasn't a wholesale disposal of the lands of the crown.

Now there is. The government actually has a monetary incentive, now to dispose of lands without, without these marginal strips and this official paper, actually records the Minister's position on this. That they recorded that one of the side - the necessity of the survey, is the effect on asset values of SOEs and it recorded that the Ministers agreed that the land which was to transfer to Landcorp, should be valued with no allowance made for the loss of marginal strips. They further went on to say, that Landcorp had raised objections, that if the government attempted to renegotiate the asset valuation, that they've agreed now, that if the government insisted on marginal strips being created, Landcorp would insist on renegotiating the whole package and hence delay the whole asset sale programme. And that is the central thing that has driven this legislation from start to go.

WOOLLASTON No, it's not correct, Bruce, and I have, I have been involved in the legislation - not just since 1988, but since we decided to set up a Conservation Department, and that is absolutely incorrect. The fact that you have, you have got one paper which is laying out the views of Land Corporation, doesn't mean that Land Corporation has been driving the government. It's absolutely incorrect. I do take, I think your statement that this is the first time that there has been a wholesale disposal of crown land is wrong on two counts. One, is there is not a wholesale disposal of crown land at the moment. Um, there is a very small disposal through Land

Corporation of crown land. If you add the areas, it is not vast. If you go back, though a century or so, well just about a century - you will find there was a wholesale disposal of crown lands, that's how two thirds of New Zealand came to be in private ownership because it was, it was - the law at the time and the Treaty of Waitangi made this absolutely clear - said only the crown can acquire land and then the crown will on sell that land as crown land to private owners and that's why the original requirement for a Queen's Chain was put in there. What we have done here, in this Bill, have made it impossible for a state owned enterprised to acquire land without having the marginal strip made off and that is, that is what I thought you wanted. It's certainly what I want. I don't want to have land sold to the private or to the public into private ownership, or to a state owned enterprise, without having that marginal strip laid out and that's what this law ..

ANNCR ... but the potential exists for that to happen, Mr Woollaston, doesn't it?

WOOLLASTON No, it doesn't. Ah, the potential existed very much in the old legislation, because it just required the Minister of Lands or one of his officials under delegated authority, to say it is not necessary to have a marginal strip and there wasn't a marginal strip. No justification was required.

ANNCR I would ...

WOOLLASTON ... under this Bill, it has to be able to be

demonstrated in a court of law, because the decisions are all subject to judicial review, so I have to be confident that I can prove in a court of law, that any strip I had decided shouldn't be taken, had little or no value for conservation or public access and those needs could be better met some other way.

ANNCR There are other aspects of the Bill, and other matters of conservation I'd like to get on to, so I'd like to finish this discussion on the marginal strips. Now, Bruce Mason says he represents a large lobby group. People who are concerned that these places of beauty around rivers, lakes and the seashore that we have public access to, that people want to retain access to, that it may be threatened. Now what, what do you say to that expression of concern by large numbers of people?

WOOLLASTON Well Bruce, certainly has a very good network. Bruce has alarmed a lot of people and I think initially, the work he's done in the Bill was very good because there were problems with it and he, he analysed those. But I think he became convinced by his own rhetoric and he's put out a lot of material which has alarmed a lot of people. I sat down with the three, the leaders of the three organisations which are the parents of Public Lands Coalition, - the Federated Mountain Clubs, the Forest and Bird Society, and the Acclimatisation Societies and we worked out what changes really were necessary if the Bill was going to allay their concerns and that was done. And they declared themselves happy with that, since

then they've come back after the Select Committee stage and said there are a few more problems. I agree with that, and they've been addressed in the Supplementary Order Paper. But they've declared themselves well happy with the Bill. I've, I've - anybody who's actually been taken through it, seems to be fairly happy with it and I think Bruce really has become ..

MASON I'm on my own, am I, Minister?

WOOLLASTON No, no. You're not on your own, you're a very good publicist, but I say, I think you've become a bit obsessed by this plot theory that you see there.

ANNCR Can I have your, your final response briefly, please Mr Mason?

MASON Well I have to correct that three parent organisations are not happy with the Bill as at present. They were not consulted when only a week ago, the Minister introduced a Supplementary Order Paper which gave Forestcorp, or the owners of crown forestry licence, the right to not only harvest existing trees on future marginal strips, but to plant another crop. This is further proof that the SOEs are driving it. However, so - I have to correct you on that Minister, those parents organisations are not happy when ...

WOOLLASTON ... were they lying to me when they told me they were happy in my office?

MASON When?

ANNCR

Please continue briefly with your reply, Mr

Mason.

MASON

Right, yes. The point is that this is a very unhappy piece of legislation, a major area we haven't covered, but I will just touch on - the whole appointment of private people over public lands is a horrific precedent and the Minister in accepting that, by having private land owners have control over especially protected areas, has opened the floodgates for all the other conservation estate right up to the national parks, potentially being in the same situation. And that is something that everyone in New Zealand would be totally opposed if they realised.

ANNCR

Bruce Mason thank you for your time this morning.

DURATION:

36 minutes