

TRANSCRIPT OF 'INSIGHT' PROGRAMME
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THE 'QUEEN'S CHAIN'

Bruce Mason (unannounced).

Its a direct assault on the individual liberty and freedom of every individual. Its just such a fundamental attack on what we perceive to be every New Zealander's right.

Philip Woollaston (unannounced).

I am aware that it is an area where there is very strong public feeling, and I share that strong public feeling. New Zealanders are very concerned about their land and I think that's good. I applaud it.

Penny St John (interviewer).

Since this country was colonised, New Zealanders have taken for granted access to rivers, streams, lakes and sea shores. This right was written into legislation by the country's founders. But a proposed new law, the Conservation Law Reform Bill, has alarmed many recreational and conservation groups. They fear public rights of access to the Queen's Chain are under threat, and the governments in danger of legislating away one of the fundamental rights of New Zealanders.

St John.

In 1840 Queen Victoria instructed Governor Hobson to set aside a chain-wide strip of public land on the waterfronts of the new colony. That's why these strips came to be known as the Queen's Chain. These principles were put into legislation in the 1890's and have been strengthened in later laws. Bruce Mason is the Dunedin based researcher for the Public Lands Coalition, a grouping of the Royal Forest and Bird Society, the acclimatisation societies, and the Federated Mountain Clubs, set up to fight for the retention of public reserves. Bruce Mason believes the clear intention of the country's founders was to avoid duplicating the situation they left behind in England.

Mason.

Well they were obviously influenced by conditions in the mother country, the fact that the general population didn't have general access to waterways and coastlines, even on royal estate, so they obviously didn't want to repeat those kinds of social errors, if you like, in the new colony.

St John.

So unlike England, access to recreational areas isn't limited to the privileged elite. New Zealanders have always taken for granted they have a right to go down to the sea or fish the country's rivers without the threat of being asked to leave by the landowner. This is a right which makes New Zealand somewhat unique, according to Keith Spry convenor of the Queen's Chain Protection Group, another organisation set up to fight what it sees as attacks on retention of these public reserves.

Spry.

I have a cousin who had a very good position in Canada, married, brought up a family. He returned to New Zealand; I said why?; we were sitting on the beach at the time. "Because of this I can come and sit here when I want to, where I lived I couldn't, I'd have to pay to go through a gate. and then sit where I was told to sit." And that applies in so many places where concessions have been granted.

St John.

Groups like the Public Lands Coalition, and the Queen's Chain Protection Group, feel this right of access to the Queen's Chain could now be under threat, with the introduction of the Conservation Law Reform Bill. They argue the Bill provides for ministerial discretion to dispose of or sell strips. The public ownership of the Queen's Chain is no longer assured and there is a danger landowners could cut access or even privatise public reserves. Researcher Bruce Mason...

Mason.

The worst scenario would be that the Government would exercise major waiverings from the establishment of new strips on the SOE lands, and all the existing strips, and there's literally tens of thousands of kilometres of them, would be liable for disposal to the adjacent landowners. Next sort of down the line in the fears would be private landowners, as managers, exercising their discretions that they are given under the Bill to exclude the public, and it would get to the extent of the public having no certainty of access to most of our rivers and streams, and that would actually deter them from trying. That would be a major loss I'd say just from the whole character of what it is to be a New Zealander.

St John.

The government argues it has no such intentions. Last week Prime Minister Geoffrey Palmer made a strongly worded statement saying public access to the Queen's Chain won't be jeopardised, and the Bill will be altered at the select committee stage. Opponents of the Bill have welcomed this assurance. But they're still worried. One of

the major concern is the ministerial discretion to sell Queen's Chain, or 'marginal strips' as they are loosely called, if they have little or no value for conservation or access purposes. Dr Hugh Barr from the Federated Mountain Clubs says this is the first time the Minister of Conservation has been given such powers.

Barr.

If a Bill says, or an Act says that the minister can do something, sooner or later he is going to find that it is in his interest to do so. Ministers haven't had that right previously and what we want to see is the status quo retained so they do not have the ability to dispose of strips.

St John.

There is also alarm that the Minister of Conservation will be able to sell or dispose of marginal strips if he or she is satisfied that the current productive value of the strip is greater than its conservation value. Auckland ecologist and retired marine biologist, Professor John Morton has written a report on coastal marginal strips. He believes the days of public access to the Queen's Chain could be numbered if this provision isn't changed, because a market value could be placed on this public land.

Morton.

I think we've taken, not a permanent return to old notions of the market. We've taken a few violent hiccups or lurches back, lurches back into a, could I use the word, crapped-out private market economy. New Zealand is just a little slower than many parts of the world in seeing I think the deficiencies of this market, this price tagging, this allocation view. I gather a lot of the people who don't agree with us are very strong for pricing and allocation of even parts of our conservation heritage, including bits of the shore. I may be over suspicious but I detect the philosophy that everything has its price.

St John.

Keith Spry from the Queen's Chain Protection Group...

Spry.

And who's going to be the judge of the conservation value? Today it might be nothing. Ten years hence, twenty years hence, it must be, it might be extremely valuable. The whole of it is valuable to people.

St John.

Another provision in the Bill, appears to include Queen's Chain, or marginal strips on the title of adjoining landowners. Landowners

such as farmers would have management rights, and would be able to close marginal strips temporally for operational or safety reasons. Bruce Mason of the Public Lands Coalition argues this discretion is too wide and the public could see access to some reserves closed.

Mason.

Well, our fear is that if you give them discretion for safety or operational reasons to close the strip, that someone who wants to, would be able to find any number of pretexts to close the strip. For instance for operational reasons that could be the possibility of stock disturbance 100 metres away could be used as a reason, or the fire risk during summer months, or if a landowner establishes a golf course and he's got the golf course extending to the river bank, he could say that golf balls flying around are a danger to the public, hence we should close it to the general public. So you could dream up any number of reasons or situations where an owner who is putting his own personal interest ahead of the public interest could come up with what could be justified as a legitimate reason for closure.

St John.

Confusion also has arisen over whether or not the Queen's Chain or marginal strips would still be owned by the public if these reserves are included in the adjoining land owners' title. The government says the Crown would own the land, but Bruce Mason believes that the wording of the Bill clearly means that it would not be in public ownership.

Mason.

The present wording of the Bill, in our view, drastically changes the present arrangement. The present arrangement under the Land Act there's absolutely no doubt the Crown is the undisputed owner of these strips. Now what's proposed is that by recording the presence of these strips in future on the title to the lands to be transferred to the SOE's, that in fact the ownership of the strips is being transferred to the SOE's, and we have legal opinion that supports that view. So the whole basis of the Queen's Chain, that in fact will no longer be the Queen's Chain. If its going to be the Queen's Chain the Queen has to own Crown land, and if it's no longer Crown land its not Queen's Chain. So that's the essence of our concern on ownership.

St John.

This legal opinion was obtained from Christchurch lawyer Neil Taylor. Mr Taylor was also commissioned by the Ministry for the Environment to write a report looking at the Queen's Chain along rivers and lakes. This report, which hasn't been made public, points

out very strongly that the government's proposals regarding title would put public ownership of the Queen's Chain in doubt. It says...

"The government's decisions regarding marginal strips are praiseworthy but difficulties arise in putting them into operation. The concept of including marginal strips in an adjoining landowners title, with a statutory exemption giving ownership to the Crown, is clumsy, and on the face of it, it is totally contrary to the Land Act intention of reserving marginal strips from sale."

Obviously this advice was not followed. Neil Taylor also helped compile a submission on behalf of the Law Society. He says the Bill's provisions for ownership are quite legally clear.

Taylor.

Regrettably there has been a lot of confusion about this, and the answer is no. Under the present wording there would be ownership given to an adjoining owner with a reservation back, back to the Crown.

St John.

The Minister of Conservation is Philip Woollaston. He says he is determined the Bill will be amended. He says there are no plans for any wholesale disposal of the Queen's Chain.

Woollaston.

It has never been an intention to dispose of marginal strips, in general. What the Bill does contemplate, is where an old section 58 strip, which is now called a marginal strip, no longer serves the purpose for which it was retained, that is it's now distant from a river, or something else has happened means that it cannot provide practical access, its possible to dispose of that in exchange for a better piece of land, a piece of land more relevant to the purposes. As I say there is some concern about the way in which that is expressed that's given rise to this fear there is some sort of secret agenda to sell off the Queen's Chain. In view of that fear I'm determined that the Bill should be amended to make it quite clear that that's not a possibility.

St John.

Who's actually going to own the title to these marginal strips?

Woollaston.

Oh the Crown! There won't be title issued for them like most Crown land, like nearly all the land that DOC administers. They don't have a title because they are, they are the Crown's land. A title is something which, which indicates a private ownership of land

generally. There will not be a particular certificate of title issued in respect of this land because it remains part of the Crown estate. There certainly won't be any private title issued to them. The title which is referred to will be title to the adjoining land and it will make it absolutely clear where the adjoining land stops and the Crown land starts and that's what title is for.

St John.

Is this a very badly worded Bill?

Woollaston.

Oh no, its a complex Bill. I think this particular section is, was difficult draughting. It was actually drafted at a time when I was out of the country, but it is complex. Inevitably, complex new law is introduced to parliament, is referred to a select committee so that a wide range of interested people can work it over, examine it, and inevitably there are amendments needed.

St John.

Opponents of the Bill though are unhappy this legislation ever saw the light of day. Philip Woollaston and Geoffrey Palmer have certainly convinced opponents of the Bill they're sincere in wanting it changed. But Bruce Mason from the Public Lands Coalition is suspicious that there is considerable pressure from groups like Treasury and some State-owned enterprises, in particular Landcorp.

Mason.

A bit of conjecture on my part because the public hasn't been kept informed as to the reasons for it, up until the very recent time when the Bill was introduced. It appears that there were no pressures from the conservation department or any other body for major changes until the advent of the State-owned enterprises, and the government embarked on a programme of transferring very large areas of Crown lands right throughout New Zealand over to these new SOE's, and I think its come in at that stage. What's happened is that perhaps the government has stepped into a bit of a trap or minefield by agreeing on the asset value for these SOE lands without taking out, or making allowance for the area of these marginal strips or Queen's Chain. So they have actually agreed on a price already as far as I understand, and that would create some difficulties that perhaps the SOE's could come back and say well if you insist on removing these areas from the area we have agreed to pay for, we'll perhaps reopen the asset value negotiations and delay the whole setting up of our organisations.

St John.

Conservation Minister Philip Woollaston...

Woollaston.

Well I haven't been part of the SOE asset valuation process, but I would think not because they have known for a long time, and Treasury which conducted the negotiations for valuation have known for a long time, that marginal strips were not going to be included, so I'm sure that they would all have taken that into account.

St John.

It has been suggested that some SOE's in particular Landcorp have had a lot of influence on this debate, that in fact they want ownership of these marginal strips. Have they in fact influenced the draughting of this Bill?

Woollaston.

No, I don't think they have. They have been consulted by the minister responsible for SOE's, as private land owners have been consulted, as recreational and conservation groups have been consulted. But I am aware of the fact that Landcorp have some concerns about the Bill, they have expressed those concerns. I don't think they have had any undue influence on it. If they had, they would perhaps be somewhat happier with the result.

St John.

Bruce Mason from the Public Lands Coalition...

Mason.

From my knowledge of the whole background to the whole SOE pressures, we do know various SOE's, Landcorp in particular, have been lobbying very hard to actually have full ownership of these strips, and they are still lobbying. Knowing that kind of pressure and knowing that the government is determined to reduce its deficit by selling off a lot of these State-owned enterprises, I think those kind of pressures that might delay or reduce the asset value, is certainly a cause for concern.

St John.

Landcorp in fact openly admits its been lobbying hard over the question of Queen's Chain. Landcorp was set up in 1987 and its buying from the Crown about 180 of the old Lands and Survey farm blocks. Chief Executive George McMillan says Landcorp started lobbying when the 1987 Conservation Act was passed. This Act meant SOE's had to create marginal strips or Queen's Chain on all their properties with sea frontages or reasonably large streams, rivers or lakes. George McMillan believes this requirement is causing major problems.

McMillan.

We would no longer have automatic riparian rights to water for our stock. The survey obligation to get titles to our properties rested with the corporation itself, and a tentative estimate of the cost of surveying all these mandatory one chain strips was going to be in the tens of millions of dollars, which we would have to pay.

The Act was brought into being, that's the Conservation Act 1987, and unlike the former Land Act which gave a discretion to the Minister of Lands at the time, to waive the reserves where they were clearly no longer, were not required, or it was inappropriate to provide them. The Conservation Act provides no such waiver opportunity and it is mandatory that these things be laid off whether they are required or not. We thought that was very dangerous. It created a waste of money, tens of millions of dollars in survey costs, and it created all sorts of other problems for us and for other landowners from this point on.

St John.

Chief Executive George McMillan believes it was this lobbying which resulted in the Conservation Law Reform Bill.

McMillan.

We raised these issues before any one else did, largely because we were all very familiar with the subject having dealt with it over the years in the former department. What isn't true is that we have had anything to do with the framing of the present Bill that's before the House. We don't like that as much as other people don't like it, but possibly for other reasons.

St John.

One of the things Landcorp is unhappy about is what it claims will be the huge cost of surveying marginal strips. This claim has been received somewhat skeptically by conservation minister Philip Woollaston who argues the whole point of the Bill is that survey doesn't have to be done. And Dr Hugh Barr from the Federated Mountain Clubs believes even if surveys are done there will be little additional cost to Landcorp.

Barr.

The enquires that we have made to the Department of Land Information, which is the survey department, is that it would cost very little, and was quoted in the order of one to three million dollars, to survey out this land and retain it in Crown ownership at the time of the survey of the SOE's. Now the total survey of the SOE's as from press releases that I've seen estimate that cost at about 40 million dollars. So we are talking about a 5 percent

increase on that, and that's really to give the public security over the Queen's Chain, and we don't think that's a very big price to pay to achieve that end.

St John.

Landcorp also argues that for example it might have to move a commercially sensitive animal research station in Northland if the public is allowed onto streams on this land. But researcher Bruce Mason argues there is already provision for exemption for projects that are in the national interest. The coalition also believes the private sector's always accepted the public demand for the Queen's Chain and that Landcorp seems to be trying to gain a privileged position. Another of Landcorp's criticisms is that the Bill doesn't make it clear who would own the land. George McMillan believes this confusion might affect the valuation of corporation property when its sold. So who should own the land according to Landcorp?

McMillan.

What we say is that, the easiest, cleanest, and most appropriate way of handling it, is to include the land in the titles of the adjoining owner, in this case Landcorp, or any other SOE, but at the same time by legislation provide for automatic public access and usage of those strips, in an appropriate wording in a piece of legislation, something like the Scandinavian 'wander-at-will' provision, except that it would be restricted to within a set distance from a river or watercourse. We think it is so logical we cant understand why people wont look at this.

St John.

Dr Hugh Barr from the Federated Mountain Clubs...

Barr.

There's no reason why we can't have wander-at-will and still have the Queen's Chain. First of all, I didn't know that the farmers of New Zealand have been very keen to accept wander-at-will. We have promoted it with them, but they have generally taken a very negative attitude to it. It's in Sweden wander-at-will is a, pertains, they have more forested land than we do in New Zealand, so I think that this a bit of a red-herring, this could get us off on 20 years of debate before anything could happen.

St John.

Perhaps ironically George McMillan from Landcorp has always had the reputation of being a very practical fighter for the public's right to enjoy the environment. Environmental groups are now asking if he's changed sides.

McMillan.

I suppose that is not an unreasonable thought in some minds but I can assure you it isn't correct. I'm fighting this one because it is an unworkable piece of draft legislation, and because it is unfair to landholders in general, and I think that my conservation leanings are exactly the same as they have always were.

St John.

But groups representing environmental and recreational concerns believe that Landcorp has had too much influence in this debate. Dr Hugh Barr says he welcomes the Prime Minister and the conservation minister's assurances about the future of the Queen's Chain. But he is obviously still concerned.

Barr.

We have negotiated with Philip Woollaston and he told us in good faith that the government's intention is to protect the rights of the Queen's Chain, and certainly our discussions with him have convinced us that he is very sincere in that end. But the consistency with which the Bill takes, tries to take away the public's rights of access is very much of concern to us. Now, how that got into the Bill I do not know.

St John.

What these groups fear is that a market view or price-tagging of the environment is slowly becoming accepted in some quarters. Dr Hugh Barr thinks the Conservation Law Reform Bill is just the latest in a series of attacks.

Barr.

And its really all come about since the SOE's were set up. First of all there was a large public battle about getting appropriate land reserved from sale to the state enterprises. Since then we've had the Crown Forests Assets Act which makes it very unclear what access rights the public are going to have to the forests that the Forestry Corporation is presently auctioning off, and that's something of major concern. Soon after that we've had this Conservation Law Reform Bill which tries to fudge the issue of whether the Queen's Chain is going to retain public access and public ownership of the Queen's Chain, and we are told that the Resource Management Law Reform legislation is also going to be a further assault on the rights of the public, and that some areas of coastline, esplanade reserves, may actually be privatised under that. So what is of concern to us is there seems to be a concerted campaign to reduce the public's rights of access to the countryside of New Zealand, and we are very concerned about that. It seems to us that its the bureaucracy, the Treasury idea that public rights should be

privatised, to be at the back of this thing. But it does seem that some ministers seem to have adopted the Treasury position.

St John.

Other opponents of the Bill share these fears. Ecologist John Morton thinks there is some opposition to the idea of what he calls 'the commons.' He recalls the work of a committee convened by the then Conservation Minister Helen Clark. This committee recommended an expansion of the coastal Queen's Chain, and John Morton thinks this idea didn't find favour in some quarters.

Morton.

That committee rather vanished from the scene early in the day. We had, I don't think I'm letting out any state secrets, a meeting with the committee from the department of environment, and very nice people, in, you know, three-piece suits and I think rather, what's the word, modernly-minded. We I think came across as a little bit a crowd of oldies who were committed to this odd public sector principle, or this, 'commons of New Zealand' principle. We didn't want allocation or privatisation at all. That seemed to be the view the consensus among us which we were viewing the planning of the shore, and we, I don't complain about this, but we very shortly ceased to exist, and the work we done was drawn in, subsumed into the work of the Ministry for the Environment and we hope that something of this is still recognisable when Geoffrey Palmer issues his resource management law reform.

St John.

But John Morton believes if chinks are made in the Queen's Chain this will come to be regarded as a major act of vandalism by future generations.

Morton.

Sometimes its hard to find chaps under fifty that perhaps look back to a time when we took for granted the public sector, the commons of New Zealand, including that bit of it on the coast we all call the Queen's Chain. I believe we will come back to such a fullness of appreciation and we will be terribly sorry about anyhow we've incautiously let go under the impetus of what I call the, market hiccups or set of market spasisms we're getting. We're in, we're in quite a chronic state, economy-wise, intervention of the market, and this is bound to impinge on our greatest asset of all which is land. I don't want to over-stress that danger. I believe a lot in Philip Woollaston's, what's the word, integrity, feeling for the land as a minister. He's one of the few ministers that I used to say, have clay on their boots and comes from rural constituencies, but I do think the conservation amendment Bill is dangerous. In wilderness is

the salvation of the world as Henry David Thoreau said, still applies in New Zealand today. Salvation of the world, and perhaps the physiological sanity in recreation we get in wilderness. Knowing that wilderness is there, and its still a retreat and an option open to us. I just so bitterly distrust the market philosophy, exclusive market philosophy, never more so when it comes to price-tagging and privatising of public resources.

St John.

Conservation Minister Philip Woollaston...

Woollaston.

I'm aware that it is an area where there is very strong public feeling, and I share that strong public feeling. I certainly would be incensed myself if there were any serious proposal to dispose of the Queen's Chain. What has surprised me a little bit is the currency which, the suggestion that the Crown is going, is proposing to sell marginal strip or to make it private, has gained. I think it's disappointing that there has been such a ready acceptance of something which the Crown has said and the government has said all along its not on, its not its intention. So I haven't been at all surprised that there is passionate feeling about this question. I share that passionate feeling. It mirrors the feelings which were expressed about the allocation of land to State-owned enterprises and to the Department of Conservation. New Zealanders are very concerned about their land and I think that's good, I applaud it.

St John.

Bruce Mason of the Public Lands Coalition...

Mason.

Every ordinary New Zealander is directly affected. If this Bill goes through in the present form, and I'm not saying that it will, but if it does, its a direct assault on the individual liberty and freedom of every individual, to go, to wander down to their favourite beach, or to their favorite spot beside the river for a picnic or to thrash the stream with their fishing rod. It's just such a fundamental attack on what we perceive to be every New Zealanders' right.

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