

Queen's Chain Profile

Recorded Statements
Concerning Marginal Strips

by

Rob Storey

National Opposition Spokesperson for the Environment
Member of Select Committee on Conservation Law Reform Bill
MP for Waikato
1990

“...an important Bill that has caused me to receive more letters criticising it than practically any other Bill I have been associated with...”

10 August 1989

Introduction and First Reading
Conservation Law Reform Bill
(*Hansard* Vol 500, pages 11853-54)

MR STOREY: “The question of marginal strips has been a vexed one in the past and it seems as though it will be increasingly difficult one in the future, because some changes have been made in the legislation. I shall ask the Minister several questions about those changes. In relation to marginal strips, the Bill provides that, when land of State-owned enterprises, or other land, is being sold by the Crown, a strip of land along the edge of a stream, a lake, a waterway, or whatever, will be reserved except in exceptional circumstances. In the case of lakes the strip is to include the maximum flood level of any lake, and that would extend the marginal strip a very long way on occasions. I can imagine that a large part of the Wairarapa, for instance, could be included in that way if flooding took place. I ask the Minister how many circumstances there are throughout New Zealand in which, under the legislation, new marginal strips will come into being when land is likely to be sold that will be affected by that provision.”

“The power to declare land not to be a marginal strip is an intriguing device, and I wonder how often the Minister has used it in the past, and whether he contemplates using it in the future. Is it simply there as an emergency action that he might like to use at some time? I suppose that as a last resort, when there are no more assets to sell and the Government has run out of money, marginal strips that are located in good places could be declared not to be marginal strips any longer and the Crown could thus sell them.”

“Electricorp is excluded when the marginal strip is part of the core asset of the Electricorp operation. Obviously, that exclusion is sensible enough if the marginal

strip included the area around the edge of the lake where the dam intruded. That could hardly be sold without damaging the integrity of the Electricorp asset. In how many other situations is the marginal strip included in the core asset when it simply goes around the edge of the dam or lake? Will that same exclusion continue in all cases if Electricorp is sold to foreign interests? It is very important that New Zealanders should know that they will not unwittingly place an overseas company in a very privileged position in relation to some of our prime land by putting it under their control. Previously, the land was thought to be in the hands of the Government and of New Zealanders. A totally different position exists if the asset of Electricorp is to be sold.”

“There is also the ability to appoint the owners of the land adjacent to marginal strips as the managers of the land. The Minister has the ability to appoint those owners as managers, but on some occasions they might refuse. The list of matters that managers might be responsible for in relation to the marginal strip seems to show that the owners will have the use of the land for no payment, but will be required to provide a high degree of management, and to give access to the public—and they will have some quite substantial obligation on particular pieces of land that may not be of great value to them. They may simply say to the Minister: “We don’t want to have anything to do with that. It is a great nuisance to us. You do what you like with it.”

“What will the Minister do with the land? The practicalities of finding somebody to manage an isolated marginal strip that comes into being because some part of the Crown estate is sold could be quite difficult, and some wildlife reserves could develop along the marginal strips in not quite the way that was intended. I am interested to know how the Minister intends to have the strips managed if the adjacent landowners turn down that responsibility.”

“Several other requirements and restrictions can be imposed by the Minister on the managers of the strips, and I wonder whether they are all totally necessary. The manager must be concerned about the maintenance of riparian vegetation, wildlife, water quality, the health of aquatic life, access, and the recreational use of the strip. Those are all responsibilities that the Minister can require of the person who takes over the management of that piece of land. I would also be interested to know whether the Minister has had any estimate from his department of the area of land that is likely to be affected by the Bill in the next couple of years, and the expansion of the marginal strip philosophy to many areas of land that are likely to be sold in the near future. I know that substantial proportions of land will be affected when the sales of Forestry Corporation and Coal Corporation go through. Some of them will be in quite unusual places, and I wonder whether the Minister has any information on the total area to be included.”

12 December 1989:
Report of Select Committee
Conservation Law Reform Bill
(*Hansard* Vol 504, pages 14459-61)

MR STOREY: “The Bill is of great interest to New Zealanders who enjoy their recreation in the great outdoors. The Bill ostensibly sought to remove some outmoded parts of the law related to conservation quangos. It sought to change the law related to freshwater fish and game bird management, conservation management planning, and marginal strips. When it was introduced it appeared that it was a tidying-up Bill to try to bring consistency to the operation of conservation management. However there was a very large hidden fish-hook in this innocent Bill, and that fish-hook could have enabled the Government to bring into Treasury millions of dollars. It could have made the Minister of Conservation the biggest raider of the public estate in history. I am referring to the most contentious part of the Bill—clause 15, relating to marginal strips. That was the subject of much public concern and a great deal of debate. The public debate raged on as late as last Sunday, when on radio I heard the Minister of Conservation trying to

defend his position. It is very important that the intention in the Bill is made plain to the House, and also what has now been written into it as a result of changes proposed by the Opposition.”

HON. PHILIP WOOLLASTON: “What rubbish!”

MR STOREY: “The Minister of Conservation has, for the last 3 months, told conservation groups that it is rubbish. The chairman of the select committee said that it is rubbish—that the Government had no intention to sell the marginal strips. The fact of the matter was that the power was there. The Minister of Conservation may have had good intentions. I am not questioning his intentions, but I think that someone pulled the wool over his eyes in sliding the provision into the Bill. He was one of the people who suggested that it should be changed. Either there is a breakdown in communication between the Minister and the people who drafted the Bill in the first place, or there was a plot to enable the Crown to be able to sell marginal strips. It was only because of the strong opposition mounted interest groups, and the Opposition’s implacable opposition to the potential rip off, that the change was made.”

“I heard the Minister on radio on Sunday defending his position, and he was very embarrassed. I accept that probably the Minister was not about to sell off 10 percent of New Zealand, but certainly some of the Treasury Ministers pulled the wool over his eyes and managed to have the clause included. The Queen’s chain is important to New Zealanders because it is unique. It is the strip of land a chain wide along the edge of major rivers, lakes, and the foreshore, and was introduced into the law to protect the right of the public to have access. Times change and legislation changes, and sometimes it is necessary that the Minister has the ability to alter the ownership of the marginal strip, particularly where the marginal strip moves, as it sometimes does: a river changes its course, and the chain strip along the edge of the river that has been nicely surveyed is high and dry several hundred metres from the water.”

“The Opposition recognises that when that happens the Minister needs to be able to dispose of land so that he can acquire some other land. That provision is now in the Bill. However, the blanket provision enabling the Minister to sell or dispose of the marginal strip, which has rightly upset many people, have been removed from the Bill, and the Opposition is pleased that the clauses that caused the difficulty, particularly new section 24D in clause 15, have been clarified. There was also substantial debate and argument on the matter of management of marginal strips. Nobody knows the amount of land is covered by that provision. It has not been accurately quantified, but many thousands of hectares of land must be included in the marginal strip definition. It is, of course, of importance from a conservation viewpoint that those strips be well managed.”

“Where there is adjacent farm land there has been a de facto practice in the past of allowing the adjacent farm land to continue farming operations down to the edge of the stream provided that public access along the stream is not impeded. Changes were suggested to new section 24G in clause 15 relating to the management of marginal strips, and that provision has probably been improved.

“I emphasise that the select committee—certainly the Opposition members on it—believes that the right of the public to have access is reasonably protected.” *1

“...the committee has done its best in put in place a law that is workable and that will serve the interests of those New Zealanders who enjoy the outdoors and who are entitled to continue that enjoyment.”

There is certainly the ability for the Minister to allow adjacent land owners to take over the management of the strip. I emphasise that the select committee—certainly the Opposition members on it—believes that the right of the public to have access is reasonably protected. There are one or two circumstances in which access can be refused—when there is fire danger, or because of farming practice in some parts of the high country; for example, if lambing is in progress—but only for a very limited period.*¹ By and large the public's right to have access to the rivers, lakes, and foreshore is protected. Although I do not believe that the present Minister would sell large areas of land, other Ministers did have it in mind that such sales could be a useful source of income. That has now been denied to any Minister or any Cabinet, and I am pleased that the rights of the public have been protected."

"Some of the changes in the Bill will be debated by conservation interests for some time. It will not be straightforward, but the committee has done its best in put in place a law that is workable and that will serve the interests of those New Zealanders who enjoy the outdoors and who are entitled to continue that enjoyment."

8 March 1990
Second Reading
Conservation Law Reform Bill
(*Hansard* Vol 505, pages 501-5)

MR STOREY: "From time to time Opposition members criticise the Government for the amount of money it spends on public relations and in selling public policy. On this occasion I must say that the Minister of Conservation deserves congratulations on spending absolutely no money."

HON. PHILIP WOOLLASTON: "Nonsense!"

MR STOREY: "The Government has spent no money to explain to the public the changes made under the Bill. I would almost have forgiven him if he had spent some

"...several other requirements and restrictions can be imposed by the Minister on the managers of the strips, and I wonder whether they are all totally necessary. The manager must be concerned about the maintenance of riparian vegetation, wildlife, water quality, the health of aquatic life, access, and the recreational use of the strip."

"I sincerely hope that we have not now closed down the right of the Minister to prevent access to those strips to an unreasonable degree."

money, because I have received an unbelievable number of letters from various interests concerned about the Bill—people who believe that they have been sold down the river. In some cases I have almost had to defend the Government, because the criticism has been so bad. I have almost had to defend the Minister's intentions. No one trusts the Government at all, and the suggestions in the original Bill that marginal strips could be sold and that acclimatisation societies would be taken over and put under the control of the Department of Conservation has upset many people who do not believe that the Government has noted their concerns. They do not trust the Government, and they believe something that was theirs—the rivers and beaches of New Zealand, to which they had free access and free rights—will be taken from them."

HON. KEN SHIRLEY: "Hogwash!"

MR STOREY: "The Minister—the former chairman of the Planning and Development Committee—can say that, because only the Government knows what will be in the supplementary order paper. Members are debating the second reading of an important Bill that has caused me to receive more letters criticising it than practically any other Bill I have been associated with. That is because the public does not know what the Government will do."

"The House does not know what the Government will do to meet the substantial criticism that has been levelled at it. At the opening of Parliament a protester stood on the steps of Parliament trying to reach Her Majesty the Queen to tell her that the Government would take away a right that is enshrined in New Zealand legislation—marginal strips; the Queen's chain. Why was that protester at the opening of Parliament? Why the need to protest, if the Government's motives in the Bill were understood? They are still not understood."

"There was some agreement at various stages at the select committee that changes needed to be made. I am a member of that select committee, and I have not been told of those changes; I have not been privy to them. The Minister is not being open, and that can make me believe only that he has decided that some of the worst fears of people—that he would sell some of the marginal strips, the Queen's chain, in certain circumstances—could be a reality. I hope that I am proved wrong, because I believe that the Minister did have some concern for conservation. He was not caught up totally in the thrust of Treasury to sell everything that moved. He was a Minister who would resist that."

"However, I must see the proposed legislation—I have not seen it yet; nor has any other Opposition member—that confirms what the Minister has said will happen. That is the reason for the unprecedented concern of people who want access to be maintained along the marginal strips of streams, lakes, rivers, and foreshores. I give a categorical assurance that a National Government would protect that right. I sincerely hope that the Labour Party will not make the matter an election issue; in fact, I will acknowledge that the proposals for change made by the select committee were needed. I also acknowledge that the Government was

prepared to introduce reasonable changes that will meet those concerns. I would have thought that a Minister could have explained those amendments, as bipartisan concern has been indicated.”

“One of the major matters of concern in the Bill is marginal strips. The Minister said that there was grave concern, a great outcry in reaction about that matter, because in the original format the Bill suggested that the Minister could sell, exchange, lease, or dispose of marginal strips. The Minister has now said that he can not sell a marginal strip. In consequence a problem has developed because the marginal strip is a chain-wide area along the banks of many lakes and streams. The definition is not set in concrete, in terms of a survey having been done stating that a particular area is a marginal strip. A marginal strip runs alongside the bank of a lake or stream.”

“That strip does change. The select committee had before it several examples of a stream moving not simply by 5 metres, but by a quarter of a kilometre. The original marginal strip was left high and dry. The stream had moved away from it and had separated from the strip. The marginal strip was not identified, and many were probably not surveyed. A person going along the edge of a stream—fishing, hiking, or camping—could not have said with surety at a particular point that he or she was on a marginal strip, because the stream had moved. Those people might have presumed that the strip moved with the stream. That is not so.”

“The Minister has now said that the provision has been removed from the Bill that enabled him to sell the strip that is now high and dry and away from the stream, and to purchase the area that was on the banks of the stream. If the Minister can persuade the landowner in the banks of the newly moved stream that he or she should sell or exchange the marginal strip he is now allowed to do so. If a landowner is on one side of the stream and there is another landowner on the other side of the stream, how on earth can it be in the interests of the landowner who has just had an incursion by the local river that has taken away 5 or 6 hectares of property also to exchange with the Crown a 20-metre strip along the bank for an area that is high and dry in the middle of his neighbour’s property? That is really the problem.”

“It is a technical problem, which not many people understand. One needs several graphs and charts, which I do not have with me at present, in order to explain the difficulty. Unless the Minister has devised an amendment to the legislation, in many places people will be able to proceed along a marginal strip beside a river only so far before coming to a “No Trespass” notice because the Crown had not been able to exchange the rest of the marginal strip—which could be a quarter of a kilometre away in the middle of a farmer’s field—for the area on the bank of the river, and nobody has signposted the location of the marginal strip. I should be amazed if the Minister were able to solve that dilemma with an amendment. The Government made a mistake in the first place by saying that the Minister should be given the power to sell a marginal strip without having to explain to all interested parties the occasion on which that would happen.”

“There has been an over-reaction to another mistake made by the parliamentary council, in that the Minister

will now not be able to sell in any circumstances but can exchange only when the landowners agree. I live in an area where streams often change course, and that is a regular occurrence in the South Island high country. Streams can move from one course to another over a 10-year period. There is no flexibility to deal with that change if the Minister does not have the power to state that he has changed the ownership, and to tell the people who want to tramp, fish, or hike along the banks of a river that the strip has moved, but that the river is still accessible. That is a real problem. Access will not be prohibited, but going half-way to the top of a mountain is not much consolation to people who want to go to the headwaters of a stream but then find half-way along it that they no longer have access. Many people in the conservation movement are concerned about that problem.”

“The other issue that has caused much concern is the management of marginal strips. Once again, the Minister has acknowledged that concern, and has probably over-reacted to it. In many parts of New Zealand that marginal strip could become an impenetrable wilderness of noxious weeds if the adjacent landowner did not manage the marginal strip as part of his or her pastoral farming activity or arable farming activity—or in some cases a company is involved in forestry. That would be a problem to the landowner, to the catchment board, to the regional council, and to the person who wanted access.”

“Therefore a provision was included that in certain circumstances the Department of Conservation could delegate ^{*2} to an adjacent landowner the responsibility for the management of the strip—not its ownership. I think that provision was misconstrued by some people in the conservation movement. The select committee probably acknowledged that concern and understood the action that was meant, but once again we cannot undo people’s concern. The Government wants to take everything it can, to lock it all up, and, if possible, to sell it. That kind of philosophy came through in the Bill. The position now is that the Minister is saying that if there is a major fire hazard or a major flood warning in an area, which would be a hazard to anybody who moves into it, the landowner cannot tell people that it is dangerous to cut across that area of marginal strip, even though he or she is the person who knows best. The person who is managing the land cannot say: “You’d better stay off it a couple of weeks.”

“That landowner would have to contact the Minister of Conservation and get him to place an order stating that the strip was prohibited. That is a ridiculous over-reaction. The change was introduced to protect people from danger, or to protect livestock at lambing time. It was to enable the manager to say, in a limited number of circumstances ^{*1}: “Please keep off the marginal strip in the area for 1 or 2 weeks.” The position now is that one has to contact the Minister for approval. A bad selling job was done on the proposed change in the first place. The Opposition recognised that there was merit in the intent, but the Minister of Conservation has caved in to interests that suspect his motives, mainly because of the actions of the Government in other respects—probably more so than those of the Minister. The Minister has over-reacted to the extent that people can be prohibited

from going along a marginal strip only if he has approved it. That restriction is nonsense, and could put people's lives in jeopardy. The Opposition would not be prepared to support it."

"The Conservation Law Reform Bill was supposed to integrate management of the conservation estate, fishing interests, hunting interests, tramping interests, and the interests of people who want to use the beautiful New Zealand countryside and exercise a unique right to access along rivers and around lakesides without having to get a permit or a map—a comparatively simple process. The change is probably attributable to the proliferation of lawyers—they now exist in such numbers that there is a legal morass that does not please anybody. It does not please the conservationists, or the regional councils that manage soil and water and that have a particular concern that people can be stopped from moving along the banks of rivers or lakes and placing themselves in danger. It does not please those people who have to try and earn a living along the banks of those streams and lakes. It pleases nobody."

30 March 1990
Committee Stage
Conservation Law Reform Bill
(Verbatim Transcript)

MR STOREY: "Mr Speaker, The Member for Lyttleton was just about to clarify in the minds of the House and the public of New Zealand exactly what the Government has done with marginal strips. Mr Speaker, for a piece of legislation which went before a select committee, where people of goodwill on both sides decided that try to get a good result for the fish and game estate, would get a good result for conservation, would get a good result for the people who want to use the parklands and reserves in New Zealand, I have to say that whatever happened after the select committee totally mystifies me and I don't know whether the Minister got his hands on it then and decided he was going to make some alterations, or someone in his department got to work, but things certainly came unstuck. And I have to say to the Member for Lyttleton, and to the Minister, that when I looked at the SOP number 15 which was quite seriously introduced to the House and which I wasted my time reading..."

HON. PHILIP WOOLLASTON: "It was never introduced to the House."

MR STOREY: "Pardon?"

HON. PHILIP WOOLLASTON: "It was never introduced to the House."

MR STOREY: "Well it appeared in my box and I took it seriously."

HON. PHILIP WOOLLASTON: "But your box is not the House."

"He (the Minister) said that one of the areas causing concern was the ability to close marginal strips. I never had any great problem with that. I thought it was very sensible that somebody, at some time should have the power to close the marginal strip." *3

"The Minister has over-reacted to the extent that people can be prohibited from going along a marginal strip only if he has approved it. That restriction is nonsense, and could put people's lives in jeopardy. The Opposition would not be prepared to support it."

MR STOREY: "...number 15, we were told that the amendments are going to be clearly put out, and I understand the Minister didn't see it. When he looked at it he said he didn't like it, so he said lets get rid of that—lets introduce number 20. So we are now told that SOP number 20 is the Minister's version, the correct version, the final version, I'm not sure whether the department saw this lot or whether he wrote it personally, but I would really like the Minister to clarify how the confusion has continued. Because I think that select committee had a pretty good idea of where they wanted to go. But I must say ever since it has left the select committee its been getting into a glorious tangle, and I don't see what the Minister said particularly about marginal strips. He said that one of the areas causing concern was the ability to close marginal strips. I never had any great problem with that. I thought it was very sensible that somebody, at some time should have the power to close the marginal strip, but it now seems that the only reason anybody will have the power to close the marginal strip, the example the Minister gave was the forestry estate, where there may be a fire. I want to..."

HON. PHILIP WOOLLASTON: "Public safety, floods."

MR STOREY: "Exactly, but alright then, floods, and timber felling operations, all of those should be reasons, not just fire, Mr Speaker there...well I hope..."

HON. PHILIP WOOLLASTON: "Public safety means a lot of things."

MR STOREY: "...the Minister hasn't tightened up to the extent that the person who is managing the marginal strip will not be able to close it other than for very extreme events."

HON. PHILIP WOOLLASTON: "For reasons of public safety."

MR STOREY: "...potential of a flood occurring in the next 24 hours. If I can't act to protect people who may be moving along that strip then we have got a real difficulty, Mr Chairman, so I didn't have any difficulty where it was originally. I thought it was a perfectly reasonable proposition. It just was that a number of people seemed to have some suspicions about the Minister's motives. I've always had great belief in his motives. I haven't always quite understood them but I thought....Mr Chairman, bit confused, but on that particular issue I believe that we should have erred on the side of public safety and I hope, I sincerely hope that we have not now closed down the right of the Minister to prevent access to those strips to an unreasonable degree."

"Then Mr Chairman, I think the Minister did acknowledge substantive public concern about the rights to exercise a total waiver on a strip and certainly that went far beyond the original legislation. I really don't quite understand how it happened. It didn't seem to be in the select committee situation but it certainly caused a lot of comment and I agree that it is sensible that there should not be a complete waiver along the edge of lakes and seashore. In terms of rivers I accept that is very sensible."

Changes to the Conservation Law Reform Bill

As Introduced 10 August 1989

Disposal

Ability to revoke and dispose of any existing marginal strips if of little or no value for conservation and the provision of public access; or protection can be effected by another means; and the current productive value of the strip is greater than its conservation value.

Waiver

Requirement to establish strips except on urban lands.

Reduction in Width

No power to reduce width of strips.

Closing

Managers able to temporarily close strips for operational or safety reasons and prohibit the bringing of any animals on to strips.

Appointment of Managers

The Minister 'shall' appoint suitable persons, including adjoining landowners on application, to be managers of marginal strips, except around controlled lakes.*2

Development

The manager strip may make improvements to the strip including the planting or harvesting of crops, or trees.

Select Committee Report 12 December 1989

Disposal

Ability to revoke and dispose of strips removed, except for land exchange purposes.

Waiver

Exemption of urban lands removed, but power added to waive the establishment of strips when Crown lands are sold if of little or no value for conservation and the provision of public access or protection can be effected by another means.

Closing *1

Powers of closure over strips widened. The Minister of Conservation, on the request of a manager, may 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." No time limit.

Appointment of Managers

The Minister 'may' appoint adjoining landowners, or some other 'more suitable' person, as managers.

Development

The manager of a marginal strip shall obtain the written consent of the Minister before making any significant change to the management regime of the strip, and before making or erecting any significant improvements to or on the strip.

Offences

Every manager of a marginal strip commits an offence who knowingly damages the marginal strip or causes to be damaged the strip or any part of it; or knowingly uses the marginal strip for any purpose contrary to the Act.

Second Reading 8 March 1990

No further changes.

House in Committee 30 March 1990

Disposal

As above.

Waiver

Waiver powers limited to banks of rivers and streams.

Reduction in Width

Minister may approve the reduction of the width of a strip along a sea or lake shore to not less than 3 metres if satisfied that its value in terms of the purposes will not be diminished.

Closing

Powers of Minister limited to temporary closures where any operation proposed on the strip will significantly affect public safety or where fire hazard conditions exist.

Appointment of Managers

The Minister may appoint either a Crown forest licence holder or the Director-General to be manager of the strip, but shall not appoint any other person to be the manager. Managers of strips shall 'enable' members of the public to have access along the strip.

Development

The holder of a forestry licence may manage and harvest exotic plantation trees existing at the time of the grant of the licence on any marginal strip adjoining the land to which the licence relates and may carry out one replanting of such trees on the strip.

Offences

As above.

Third Reading 5 April 1990:

No further changes before Royal assent.

What the Conservation Bill replaced—

The Conservation Law Reform Act 1990 primarily replaces Queen Chain strips created under section 58 of the Land Act 1948, deeming them 'marginal strips.'

In accordance with Queen Victoria's Instructions to Governor Hobson in 1840, section 58 strips existed for public recreation and to remain free of any private occupation for any private purposes, unlike other Crown lands. Section 58 provided—

- Guaranteed public access along the banks of waterways. Only emergency authorities, under their own legislation, had any powers of closure.*3 These remain.
- No rights for adjoining owners to develop strips or to obstruct public use. Informal use by farmers etc. was tolerated by the Crown and the public.
- Direct management by the Crown; only minimal administration proved necessary.

What was needed—

Retention of the original intent of the Queen's Chain by—

- Removal of all powers of closure from the Bill.
- Establishment of strips when all lands of the Crown are sold or leased.
- Retaining the Department of Conservation as the sole manager for all marginal strips.