

The Queen's Chain

Marshall's mission accomplished!

"The intent of the reforms is to remove inconsistencies (in legislation that) reduce the ability of the department (DOC) to respond efficiently to (concession) applicants and generate revenue for the Crown".

Conservation Minister Denis Marshall in 1993 Cabinet Minute on Conservation Amendment Bill.

In March this year Government, with the help of its United partners, passed into law provisions allowing leases over marginal strips. For the first time private individuals and bodies will be able to lawfully occupy these water margins to the exclusion of the public. Lessees will be able to invoke the Trespass Act against members of the public who have the impertinence to recreate on these supposedly publicly-owned lands. Adding insult to injury, trespass is a criminal offence. PANZ believes that with the passage of Conservation Amendment Act 1996, recreationalists have suffered a grave setback to their interests.

PANZ stated from the outset of the debate that marginal strips enjoy a special status in our public estate. Queen Victoria decreed in 1840 that such lands along shall forever remain free of private occupation for private purposes. That sentiment has long been recognised in our law, with an express prohibition applying to marginal strips in the phrase "reserved from sale or other disposition."

The Minister of Conservation is now, *without restraint*, able to offer exclusive rights of occupation to illegal squatters on marginal strips. This is a discretion he does not enjoy on other conservation areas. *This is a complete reversal of the special status of marginal strips relative to other public lands.* Other conservation areas now enjoy *greater* protection from discretionary leasing than the fabled Queen's Chain!

He can also grant leases for new occupations and activities on marginal strips with some restraint—that the activity requires the use of the strip *and* the adjacent water, and that it is essential to enable the activity to be carried on. However, if a commercial interpretation is put on these 'safeguards', *the authorisation of exclusive facilities, including fishing lodges, is possible under the new law.*

Contrary to Ministerial statements, the Bill was not an improvement on the existing legislation; it is a complete departure from the (former) statutory prohibition on 'disposition', including leasing. That prohibition has been negated by the new express provisions for leasing.

Constitutional lawyer and former Prime Minister Sir Geoffrey Palmer stated in a legal opinion last year that leasing would be in breach of the fundamental purpose of marginal strips (that they forever remain free of sale or other disposition). In contradiction to Sir Geoffrey's opinion, the Minister and officials have restated that there was already an ability to issue new leases over marginal strips.

PANZ has recently obtained copies of two official legal opinions prepared in July and August last year that provide confused, contradictory views on the question of 'disposition'. The opinions do not provide categorical support for Mr. Marshall's statements on alleged existing leasing powers. They also contradict the Minister's public assurances that he cannot

dispose of marginal strips by way of sale. PANZ believes that the Minister's statements dismissing the existence of powers allowing sale of marginal strips to be correct, however he cannot have it both ways—either there is a prohibition on all 'dispositions' (both sale and leasing) to be found in the phrase "reserved from sale or other disposition", or none at all. In PANZ's view the Ministerial and official statements have been designed to avoid acknowledgment of the fundamental nature of the changes they were seeking and to portray them as an 'improvement.'

The passage of the leasing provisions was also in complete violation of Government's promises made to the electorate during the 1993 election campaign. Denis Marshall promised to drop all marginal strip leasing provisions.

PANZ had been heartened throughout this lengthy campaign by the strong support for our stance from many groups and individuals. Public opinion was instrumental in beating back successive Government moves to push through the leasing provisions. However we were ambushed in March when Government finally rushed the Bill through the House. There was insufficient time to alert the public and so generate another flood of protests to Wellington.

Disappointingly our position was greatly undermined by Forest and Bird and the New Zealand Fish and Game Council who were reported to support the legislation. PANZ believes that such support was ill-conceived and unnecessary. United leader Clive Matthewson stated in the House that he got a "great deal of comfort" from this "independent support." It also provided a welcome excuse for Government to disregard its election promises and the huge body of public opposition to leases. PANZ believes that those organisations do not realise what they have given away. The suspicion must remain that the sanctity of marginal strips was 'traded off' for the passage of other, unrelated, matters in the Bill.

United voted with the government on the Bill, defeating alternative proposals developed by Labour. Labour had the support of NZ First and the Alliance. Without United's support Government would have lost the vote. Credit is due to Labour MP and conservation spokesman John Blincoe for his considerable efforts during the final stages of the Bill.

Parliament's planning and development committee, chaired by Government MP Chris Fletcher, made considerable improvements to the Bill. However in the most critical area, leasing of marginal strips, Government did not waiver from its determination to give effect to its primary intent as expressed in the Cabinet minute.

While some claim that there are adequate protections in the law against abuse of the new leasing powers, a 'thin end of a wedge' has been created. The previous decade of Government attacks on the Queen's Chain suggest that further 'liberalisations' and broader powers of alienation are likely to follow. PANZ predicts that, unless there is a shift away from the privatisation direction of Government, we will see further moves towards alienation of what was supposed to be 'inalienable', now that marginal strips are no longer sacrosanct.

PANZ will be watching closely for any curtailment of access and will be advocating repeal of the marginal strip leasing provisions during this year's election campaign.