

RESERVES ALONG WATER
BOUNDARIES

A Summary of Legislation

Compiled by P.V. Hughes
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RESERVES ALONG WATER BOUNDARIES

ABSTRACT:

For some years environmentalists have referred to the "Queens Chain" as being, in particular, a strip of land along all waterways for the use and enjoyment of the public of New Zealand.

The term "Queens' Chain" does not exist in any statute of New Zealand up to 1994. It is presumed the words have been 'coined' by environmentalists who have assumed that Queen Victoria in her instructions to Governor Hobson required that reserves be set aside along all water boundaries for the benefit of the public.

This assumption is incorrect. The following notes detail the Statutes and Regulations which have provided for reserves along water boundaries. Copies of the specific legislation is followed by comment where appropriate.

PANZ COMMENTARY

The author presents three misassumptions that detract from the value of this work.

1. It wasn't 'environmentalists' that coined the term 'Queen's Chain'. The name originates from a recreational concept of public access dating at least from the 1970's. The prominence of the term in recent years was primarily the result of the advocacy of recreational organisations.

2. The above groups, as the leaders of the public debate, did not claim that the 'chain' existed along all waterways. Their advocacy of its extension to all waterways is the proof.

3. Some commentators have assumed that the QC was a requirement of the 1840 Instructions, but careful reading of its terms shows there were no express provisions. Officials were instructed to report on lands that may be proper to reserve for public purposes, including along the seacoast and navigable streams.

The absence of express provision does not detract from subsequent official efforts to make waterside reserves a reality.

INTRODUCTION: The Queens' Chain does not exist in legal terms as a distinct entity but amongst some people and organisations it has become a popular but loose term for land set aside along waterways, under legislation, and Surveyor-General/ Chief Surveyor regulations some of which gave the public a legal right of access.
This claim has as its basis the Instructions issued to Governor Hobson, dated 5 December 1840.

LEGAL STATUS: New Zealand was proclaimed a dependency of New South Wales in 1814 and in 1833, James Busby of New South Wales was appointed British Resident in New Zealand. In 1837 Captain Hobson reported to the Crown the increase in the white population and their acquisition of considerable land from the Natives and suggested that action should be taken to avert disastrous consequences.

Prior to the Treaty of Waitangi, Aotearoa (New Zealand) was owned and occupied by Maori, except for some areas which had been purchased by missionaries, whalers, traders and speculators. In 1839, Captain Hobson was appointed British Consul in New Zealand and was further directed to announce immediately on his arrival in New Zealand "that Her majesty would not acknowledge as valid any title to land which is not either derived from or confirmed by a grant to be made in Her Majesty's name, and on her behalf. Thus in 1840 all land in New Zealand was either owned by Maori or the Crown and settlers who believed they had purchased land from the Maori had to have their claim validated by the Old Land Claims Commission. By the 1841 Ordinance No.2; June 1841, Section 2, all purchases, other than purchases from Her Majesty were declared null and void.

PANZ COMMENTARY

There was no national entity known as 'Aotearoa' prior to the Treaty of Waitangi in 1840. The collective entity now known as New Zealand was one of European creation dating from 1663 when the name 'Zeelandia Nova' appeared on Dutch maps

There was no distinctive Maori term for the geographical entity consisting primarily of North, South, and Stewart Islands, except for Nu Tirani which appears to be a transliteration of 'New Zealand' and appears in the Maori version of Treaty.

The name "Aotearoa" only began to be used collectively as an alternative to New Zealand in the 1860s.

ROYAL CHARTER AND INSTRUCTIONS TO GOVERNOR HOBSON

- 5 December 1840:

Section 37: By the said charter the Governor was granted the authority, by proclamation to divide the country into districts, towns, parishes etc and to execute in our name grants of waste land to us belonging (ie the Crown) to private persons for their own use and benefit or to bodies politic or corporate, in trust for the public uses, provided nevertheless, that nothing in the said charter shall affect the rights of any aboriginal natives to the actual occupation or enjoyment in their own persons or their descendants of any lands then actually occupied or enjoyed by such natives.

The Governor was authorised and required to issue instructions to the Surveyor-General to divide and apportion the colony into counties etc.

Section 43: And it is our pleasure, and we do further direct you to require and authorize the said surveyor-general further to report to you what particular lands it may be proper to reserve in each county, hundred, and parish, so to be surveyed by him as aforesaid, for public roads and other internal communications, whether by land or water, or as the sites of towns, villages, churches, school-houses, or parsonage-houses, or as places for the interment of the dead, or as places for the future extension of any existing towns or villages, or as places fit to be set apart for the recreation and amusement of the inhabitants of any town or village, or for promoting the health of such inhabitants, or as the sites of quays or landing-places which it may at any future time be expedient to erect, form, or establish on the sea coast or in the neighbourhood of navigable streams, or which it may be desirable to reserve for any other purpose of public convenience, utility, health, or enjoyment; and you are specially to require the said surveyor-general to specify in his reports, and to distinguish in the charts or maps to be subjoined to those reports, such tracts, pieces, or parcels of land in each county, hundred, and parish within our said colony as may appear to him best adapted to answer and promote the several public purposes before mentioned; and it is our will and pleasure, and we do strictly enjoin 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 the lands so specified as fit to be reserved as aforesaid, nor permit or suffer any such lands to be occupied by any private person for any private purposes.

Section 44: And it is our will and pleasure that all the waste and uncleared lands within our said colony, belonging to and vested in us, which shall remain after making such reservations as before mentioned for public service..... shall hereafter be sold and disposed of.

Section 49: And we do direct, that any person within our said colony of New Zealand, who shall pay to the treasurer..... any sum or sums of money for the purchase of lands situated in the said colony,..... shall be entitled to have appropriated and granted to him or her such unappropriated land.

Section 56: And we do further declare our pleasure to be that, anything hereinbefore contained to the contrary notwithstanding, no land shall be sold in any part of the said colony of New Zealand, which the said surveyor-general may report to you as proper to be reserved for any of the several public uses hereinbefore mentioned.

COMMENT: By these instructions to Governor Hobson, the reserves to be surveyed by the Surveyor-General were for communication, hence the use of the words 'navigable rivers'. No mention is made of any reserves along bodies of water, nor is any width mentioned. The general public only had right of access to waterways via public roads or designated public reserves.

In Clause 43, the "reserves for public roads or other internal communication whether by land or water" were for gaining access to land upstream for the purpose of settlement or grazing stock and not for the right of every citizen to have access to water for recreation. All land other than that owned by the Maori was Crown land which was able to be granted to settlers, except that land already reserved. Clause 44 led to the various Waste Lands Acts.

LAND CLAIMS COMMISSION:

By Ordinance No. 2, dated 9 June 1841, land claims Commissioners were appointed to hear claimants to land and to recommend grants which satisfied the criteria.

Section 6 of the above Ordinance:

Provided..... that no grant of land..... shall comprehend any headland promontory bay or island that may hereafter be required for any purpose of defence or for the site of any town or village reserve or for any purpose of public utility, nor of any land situate on the sea-shore within one hundred feet of high water-mark:

COMMENT: This appears to be the first piece of legislation to reserve the land of the Crown within 100 feet of high-water mark or at least to prevent it being granted. Was this 100 foot strip Crown or Maori Land? It was probably Crown Land as the purchase from the Maori would have been to high water mark, unless specifically excluded in the deed of purchase.

ORDINANCE NO.14 dated 25 February 1842.

This Ordinance repealed within New Zealand an Act of the Governor and Legislative Council of New South Wales.

It transferred from the Governor of New South Wales to the Governor of New Zealand the power to appoint Commissioners to examine and report on Claims to Grants of lands. It also provided for grants to be made to the New Zealand Company for the investments made by the Company in purchasing land from the Maori and in transporting the emigrants to New Zealand.

All other persons were to be granted lands according to the same rules as applied to the New Zealand Company grants.

Section 2: All lands within the Colony which have been validly sold by the aboriginal natives thereof are vested in Her Majesty, her heirs and successors, as part of the demesne lands of the Crown.

Section 5: The land to be granted at the recommendation of the Commissioner may be selected by the person entitled to such grant out of the land claimed by him: Provided that the land so to be selected shall be in one block,.....Provided also that when the block so to be granted shall be bounded by the sea or a river, the rectangle aforesaid shall be so placed that the narrow side or breadth shall be bounded by the sea or any such river, and that the length of the rectangle shall run back from the sea or river as near as possible at right angles to their general direction.

COMMENT: It appears that land granted to the New Zealand Company was not subject to the exclusion of the 100 foot strip on the sea-coast by this ordinance. It also appears that this ordinance supercedes Ordinance No.2 dated 9 June 1841. Land granted to the New Zealand Company and to individuals was bounded by the waterway unless specifically described in the grants.

THE NATIVE LAND PURCHASE ORDINANCE XIX, 16th November 1846.

This Ordinance further strengthened the Crown's right of pre-emption over all lands within the Colony by providing for the conviction of any person not holding a licence to purchase any land from any person of the Native race.

**THE NEW ZEALAND COMPANY'S LAND CLAIMANTS ORDINANCE XV,
2nd August 1851:**

This provided for the New Zealand Company's lands in the Colony of New Zealand to revert to and become vested in Her Majesty, as part of the demesne lands of the Crown subject to any contracts then subsisting.

Land claims were to be heard by a Commissioner and successful claimants were entitled to a deed of grant.

COMMENT:

This ordinance did not provide for any reserves of any kind to be reserved from lands claimed and granted.

SURVEY REGULATION:

It is understood that, in 1851 Thomas Cass, Chief Surveyor in Canterbury decreed in his survey requirements that a 1 chain reserve be set aside along river-banks and lakes. These survey requirements have not been located, despite a search at the Turnbull, National and Christchurch libraries.

A similar provision was made by J.T.Thomson Chief Surveyor, Province of Otago, in his instructions to surveyors dated 1861.

In these instructions, under Block and Section Surveys, which set out how surveys were to be undertaken, item 13 states:-

Reserves 100 links frontage to navigable waters. Reserve also centres of bushes, stone quarries, and sand pits for road-making, where conveniently situated for the trunk or district lines.

COMMENT:

This decree of Cass, appears to be the first specific requirement for reserves to be laid off along rivers and around lakes.

Thomson's requirement specifies navigable rivers, not other rivers and lakes and closely relates to Section 43 of the Instructions to Governor Hobson.

These reserves applied to surveys of Crown Land not private land.

THE PUBLIC RESERVES ACT 1854:

This Act provided for regulating the management of lands reserved for public purposes in New Zealand, which had been or may be vested in Her Majesty.

Section 1: The Governor of New Zealand, with the advice of his Executive Council, at any time and from time to time after the passing of this Act,..... to grant to the Superintendent of each Province..... all or any of the lands..... forming part of the demesne lands of the Crown, which shall have been..... and now are or may hereafter be reserved or set apart for purposes of public utility..... except such of the said lands as shall have been and now are or may hereafter be reserved for purposes of military defence, the service of any office or department of the General Government, or for the benefit of the native inhabitants of the said Colony.

Section 2: The Governor.....to grant and dispose of any land reclaimed from the sea, and of any land below high-water mark in any harbour, arm, or creek of the sea, or in any navigable river or on the sea coast within the said Colony, either to the Superintendent of the Province and his successors, in or to which such land is situate or adjacent, or in such other manner to such other persons and upon such terms as shall be thought fit: Provided also that nothing herein contained shall prejudice the rights of persons claiming water frontage.

Section 7: No land.....to be granted as aforesaid.....shall be alienated by way of sale or mortgage or by lease for any longer term than three years.

Section 13: Whenever any land shall have been set apart as a public reserve, and..... published in the New Zealand Gazette,..... to have been so set apart as a reserve made for the General Government, such land shall not thereafter be alienated by way of sale mortgage lease or otherwise: Provided always that if, at any future time, any such land shall not be required by the General Government, it shall be lawful for the Governor,..... to grant the same or any part thereof to the Superintendent of the Province in which such land is situate, and his successors, and the said land so granted shall thenceforth be deemed in all respects to have been land granted under the first section of this Act.

COMMENT: This Public Reserves Act provided for Crown land to be granted to the Superintendent of each

Province certain lands as reserves but no mention is made of reserves along rivers. It also permitted the disposal of land reclaimed from the sea or land below high water mark. This Act reverses the instruction 43 to Governor Hobson.

THE ENGLISH LAWS ACT 1858, 28th May 1858. declared:

Section 1: The laws of England as existing on the 14th day of January 1840, shall, so far as applicable to the circumstances of the said Colony of New Zealand, be deemed and taken to have been in force therein on and after that day, and shall continue to be therein applied in the administration of Justice accordingly.

COMMENT: Whether the Laws of England provided for reserves along water at the time has not been researched. Generally land was owned to ad medium filum aquae (ie the centre line) of rivers and streams unless the public obtained rights of access or useage etc.

THE WASTE LANDS ACT, 1858,

This Act empowered the Governor to make reserves or sell reserves.

Section XII: It shall be lawful for the Governor in Council, at any time and from time to time, to except from sale, and either reserve to Her Majesty, or dispose of in such a manner as for the public interest may seem best, such of the Waste Lands of the Crown in any of the said Provinces as may be required for the purposes of Military Defence, or for the construction of Trunk lines of road, or as Sites for Public Buildings for the use of the General Government, or for other purposes of public utility or convenience; and all such exceptions shall be deemed to have been made whenever the Governor by writing under his hand shall have notified to the Superintendent of the Province in which any land so excepted is situate, that the same is required for any of the purposes aforesaid and such notification shall have been published in the New Zealand Gazette.

COMMENT: Similar provisions were made in other Waste Lands Acts but no specific mention is made requiring reserves along rivers or the coast, other than to repeat similar requirements to those stated in the Instructions to Hobson.

Section XIII: It shall also be lawful for the Governor in Council, by proclamation in the New Zealand Gazette to change the specific purpose for which any land has heretofore been or may hereafter be

set apart as a reserve for the General Government, and also to exchange any land for the time being set apart as such reserve for other land of equal value, or to set apart any land so set apart, as he may think fit; and in case of the exchange or sale of any such land to make a Crown Grant thereof accordingly: Provided always, that in the event of a sale of any such land, the proceeds thereof shall be invested in the purchase of other land, and any land so acquired by exchange or purchase, shall be forthwith proclaimed as a Public Reserve under "The Public Reserves Act, 1854."

THE ABOLITION OF THE PROVINCES ACT, 1875:

This Act revested land which had been granted to the provinces, back to the Crown, thus all reserves so vested again became under the control of the Crown.

THE PLANS OF TOWNS REGULATION ACT, 1875:

This Act required that open spaces were to be set apart and reserved for recreation grounds in all towns laid out after this Act came into force (1-1-1876).

The only other reserves to be set apart under this Act were for Municipal property, nightsoil dirt and rubbish, gravel pits and stone quarries, etc.

The provisions of Section 3 of these regulations were included in Section 15 Land Act 1885, Sections 17 and 18 Land Act 1892 and Sections 15 and 16 Land Act 1908.

THE COUNTIES ACT 1876

Section 192: This provided for the vesting and management of reserves made for purposes of public recreation in the governing bodies of the counties or in the Waste Lands Boards of the respective provincial districts.

THE MUNICIPAL CORPORATIONS ACT 1876

Sections 350-351: Provision was made in these sections for the Governor to reserve any waste lands of the Crown and grant the land to the Corporation of the borough. These reserves were granted in trust, either for the use and enjoyment of the inhabitants, or as sites for public buildings, other special uses or as an endowment.

COMMENT: These four Acts of 1875 and 1876 do not provide specifically for any reserves along water boundaries.

LAND ACT 1877:

Section 144: The Governor may from time to time,.....whether the same has been surveyed or not, reserve from sale temporarily,..... any Crown lands which in his opinion are required for any of the following purposes - viz., for docks, quays, improvement of harbours, landing places, tramways, railways, railway stations, roads, bridges, ferries, canals, or other internal communications whether by land or by water, reservoirs, aqueducts, watercourses, water-races, drains improvement and protection of rivers, irrigation and works connected therewith, for the health , recreation, convenience, or amusement of the people,..... or for any purpose of public defence, safety, utility, advantage, or enjoyment; or as endowments for education.

Section 145: When any land has been temporarily reserved, notice of such reservation shall be published in the Gazette.
At the expiration of one month, but not later than six months, after the publication ,..... the lands described therein (not being reserves for endowments) may be permanently reserved, and notice of such permanent reservation shall be published in the Gazette, and failing such permanent reservation any such temporary reservation shall be void.

Section 146: Upon such notices being duly published as aforesaid, the lands described in such notices respectively shall become and be dedicated to the purposes for which they were reserved respectively, and may at any time thereafter be granted for such purposes in fee-simple, or disposed of in such other manner as for the public interest may seem best, subject to the condition that they shall be held in trust for the purposes for which they were reserved, unless such purpose be lawfully changed.

Section 148: Provided for the purpose of any land set apart as reserve by Section 144 to be changed, or exchanged but only after public notice in the Gazette for four consecutive weeks.

Section 149: Provided for a licence to occupy to be issued for any reserve or part of any reserve vested in Her Majesty.

Section 153: Provided for any land which has been reserved or excluded in any manner from sale may be sold.

COMMENT: In Section 144 of this Act, the purpose of the reserves does not refer to reserves along the

banks of rivers for public access. The reserves to be made were for internal communications, improvement and protection of rivers and other public purposes.

It is noted that these reserves were initially temporarily reserved from sale and permanently reserved after the expiration of one month but not later than six months.

THE PUBLIC RESERVES ACT 1877.

This Act defined 'Crown Lands' as including lands designated Crown Lands, waste lands and confiscated lands.

It also provided for all Crown Lands which had been reserved and all public reserves to be lawfully made, to be granted or vested in any governing body, trustees or other persons.

Reserves could also be brought under the Public Domains Acts and held in trusts.

The 1878 Public Reserves Act Amendment Act repealed much of the 1877 Act.

PUBLIC RESERVES ACT AMENDMENT ACT 1878.

Section 4: Interpretation:

"Public reserve" and "Reserve" includes land..... granted, reserved, or set apart for any of the purposes mentioned in the Schedule hereto,..... or under the authority of Her majesty's Letters Patent or Royal Instructions, or of any Ordinance of the Governor,..... passed with theconsent of the Legislative Council of New Zealand or of New Munster respectively, or of any Act of the General Assembly, or of any Ordinance of a Provincial Council,..... or by the New Zealand Company or its agents, or the Canterbury Association or its agents and any land which has..... been granted, reserved, or set apart for any such purposes as aforesaid by any authority whatsoever which in the opinion of the Governor in Council shall be thought sufficient, and any land hereafter granted, reserved, or set apart for any such purposes as aforesaid.....under the authority, of "The Land Act, 1877", or any other lawful authority and any land heretofore or hereafter vested in or acquired by Her Majesty or the Governor,.....for any of the purposes aforesaid, by purchase, gift, or otherwise.

Section 5: Provided for all public reserves within the colony to be divided in classes as named in Parts I, II, and III of the Schedule to the Act.

COMMENT: These included under Part II - Reserves for Public Works and General Purposes:- River

frontage reserves and any other reserve not herein defined, and made for any purpose of public safety, utility, advantage, or enjoyment. There is no specific reference to reserves along all rivers in either the 1877 Public Reserves Act or this Amendment Act 1878.

THE PUBLIC RESERVES ACT 1881:

This Act consolidated the law regulating the vesting and administration of public reserves in the Colony.

This act classified the various types of reserves, into three classes and these were generally the same as in previous Acts which were consolidated; namely:-

- Class I -** Reserves for County, Local and Municipal Purposes.
These included:- Improvement and protection of rivers, internal communication by land or water. Landing-places upon rivers and lakes.
- Class II -** Reserves for Public Works and General Purposes.
These included:- River frontage reserves.
Any other reserves not herein defined, and made for any purpose of public safety, utility, advantage or enjoyment.
- Class III -** Reserves for Harbours and Navigation, and Miscellaneous Purposes.
These included:- Foreshore reserves, Landing places, Quays.
Reserves for Education, Charitable Purposes and Recreation.
These included:- Parks and Domains, Recreation Reserves. Native Reserves, these were reserves for the use, support or education of aboriginal natives.
Under this Act the purpose of reserves could be defined, or changed and all grants of reserves were held upon trust.
Reserves except those held for public health or recreation could be leased for 21 years and other reserves could be leased for up to 14 years.

COMMENT: The specific definitions of river frontage reserves, public enjoyment reserves, or recreation reserves are not given and in view of all previous legislation it is unlikely that any of these mean what is generally accepted in today's terminology as esplanade reserves.

THE LAND AMENDMENT ACT 1884:

This provided for the sale of reserves and for the Governor to "except such portions of the land from sale as he shall think necessary, and may reserve the same for public purposes under the one hundred and forty-fourth section of The Land Act 1877."

COMMENT: This Act and other previous legislation took precedence over Section 43 of the Instructions to Governor Hobson, that he not grant any lands so reserved to any private person for private purposes.

THE LAND ACT 1885:

In Section 7 provides for "All surveys of Crown Lands and of Native Lands for the purposes of the Native Land Court shall be conducted under the direction of the Surveyor-General. Section 227 repeats section 144 Land Act 1877 as to the Governor making reserves.

MUNICIPAL CORPORATION ACT 1886 AND COUNTIES ACT 1886:

Neither of these Acts make mention of reserves along river boundaries.

SURVEYS UNDER THE LAND ACT 1885:

Regulations for surveys were published in the New Zealand Gazette 1886 p.636. Regulation 27 states "Suitable sites for schools are to be reserved, about 10 acres in rural districts and 5 acres in suburban districts. Also at least 100 links frontage to all navigable rivers and coasts, making the traverse lines if possible the boundary of such reservation.

COMMENT: This section applies to Block and Section surveys and apart from the instructions of Thomas Cass, is the first clear requirement set out under Statute to provide for the one chain strip along rivers. However it must be noted that 'navigable' rivers are quoted, not all rivers. Also there is no classification of these strips. The regulations relating to Town Surveys do not refer to reserves along water.

These regulations for surveys repeated the requirements of Thomas Cass in 1851 and J.T.Thomson in 1861.

LAND TRANSFER SURVEY REGULATIONS-
New Zealand Gazette 1886 p. 641

Section 112: Regulations 1-85 made under The Land Act 1885 shall apply equally to surveys made under "THE Land Transfer Act, 1885' where they are not inconsistent.

COMMENT: These regulations for surveys under The Land Act 1885 and The Land Transfer Act 1885 relating to Crown land and private land appear to be the first statutory requirement for reserves along navigable rivers to be set aside over private subdivisions.
Although not clearly stated these reserves for schools and for those fronting navigable rivers could only vest in the Crown under The Land Act 1885.

THE LAND ACT 1892:

Section 3: Redefined Crown Lands to mean and include-
All lands of the Crown vested in Her Majesty, which have not been dedicated to any public purpose, or..... granted to any person in fee-simple; and
All lands designated waste lands, surplus lands, Crown lands, commonages, and confiscated lands respectively; and
All lands of any of the aforesaid descriptions which have reverted to Her Majesty by operation of law, or by any deed of surrender, conveyance, or transfer; and also include
All Native lands which have been ceded to Her Majesty by the Natives, orpurchased or otherwise acquired in freehold from the Natives on behalf of Her Majesty, or have become vested in Her Majesty by right of her prerogative.

Section 15: Notwithstanding any sale or other disposal of any unsurveyed rural or pastoral land, for cash, or on deferred payments, or for occupation with right of purchase, or perpetual lease, or lease in perpetuity, or in any manner whatsoever, and at any time previous to the approval of the plan of the survey of the same by the Chief Surveyor of the district, The Governor shall have the right to exclude from such sale or other disposal any road-lines which may be required through or over any such lands, and to reserve any of the said lands which are situate on the seashore, the margin of lakes, or on river-banks, or which are required for any of the purposes mentioned in section two hundred and thirty-five, without paying compensation for any land so excluded and reserved.

Section 17: Provided for, in all towns laid off in or upon Crown Land-

- (1) Open spaces shall be set apart and reserved for recreation grounds.
- (2) In addition to any reserves for public purposes there shall be reserved from sale, as a nucleus of municipal property to be vested in the local authority as endowment.
- (3) In addition to reserves already provided for, there shall be laid out --
 - (a) Sufficient land for depositing refuse.
 - (b) Sufficient land for sites for gravel-pits and stone-quarries, and for depositing gravel, stone, and other materials required for making and repairing roads within such towns.
 - (c) Sufficient land, for public cemeteries.

Section 110: There shall be reserved from sale or other disposition a strip of land not less than sixty-six feet in width along high-water lines of the sea, and of its bays, inlets, or creeks and along the margins of all lakes exceeding fifty acres in area, and along the banks of all rivers and streams of an average width exceeding thirty-three feet, and, in the discretion of the Commissioner, along the bank of any river or stream of less width than thirty-three feet.

Section 235: The Governor may from time to time, reserve from sale temporarily, any Crown lands which in his opinion are required for any of the following purposes, namely:-

- (1) For docks, quays, landing-places, quarantine stations, railways, roads, bridges, ferries, canals, fishing-paths, or other internal communications whether by land or by water, reservoirs, drains, improvement and protection of rivers, irrigation and works connected therewith, embankments, quarries, gravel-pits, shingle-beds; or
- (2) For sites of markets, baths, washing houses, museums, or other institutions of a like character, county or municipal building, prisons, or other public building; or
- (3) For sites and grounds for schools, colleges, hospitals, and charitable institutions, or for any agricultural or pastoral associations; or
- (4) For the growth and preservation of timber or for the preservation of the native fauna; or
- (5) For gardens, domains, or for the health, recreation, or amusement of the people, or for burial-grounds; or

- (6) For the use, support, or education of aboriginal natives of the colony; or
- (7) For any purpose of public defence, safety, utility, advantage, or enjoyment; or
- (8) As endowments for public education; and also
- (9) Any land containing thermal, or other springs which should be so reserved for the public health.

Section 236: Provided for land temporarily reserved to be permanently reserved.

COMMENT: The Land Acts of 1885 and 1892 via the Survey Regulations applied to private land subdivision as well as Crown land including the requirement for reserves along water boundaries.

**REGULATIONS FOR CONDUCTING THE SURVEY OF LAND IN NEW ZEALAND-
New Zealand Gazette January 1897 p 227**

Section 28: Suitable sites for schools are to be indicated about 10 acres in rural districts and about 5 acres in suburban districts. Reserves at least 100 links frontage to all navigable rivers and coasts, bays, inlets, or creeks, and along the margins of all lakes exceeding 50 acres in area, and along the banks of all rivers and streams of an average width exceeding 50 links, and, in the discretion of the surveyor, along the bank of any river or stream of less width, making the traverse lines if possible the boundary. Bushes in sparsely-timbered country are to be reserved, and in bush-country all clumps of valuable timber; also stone-quarries, gravel and sand-pits for road-making, where conveniently situated for trunk and district lines. In the choice of quarries they should, where possible, be selected on the ridges, or in positions from which the haulage is down-hill. The tops of all high ranges, when wooded, are to be reserved, more especially at the sources of all streams; the reserves for all or any purposes mentioned in section 235 of "The Land Act, 1892," should be recommended for reservation and marked on the plan where necessary. Places of historical or scenic interest are to be recorded on working maps, and special reports recommending their reservation are to be forwarded with the map.

Section 32: Open spaces are to be set apart and reserved for recreation-grounds.

Section 34: Provided for Municipal reserves, school sites and other purposes as are enumerated in Section 235 of "The Land Act 1892."
The Land Transfer Regulations published in the

New Zealand Gazette January 1897 stated in Section 1: The regulations numbered 1 to 91 made under the Land Act 1892 shall apply equally to surveys made under "The Land Transfer Act, 1885," wherever they are not inconsistent with these rules.

COMMENT: These regulations made under the Land Act 1892 provide for the first time in a Statutory regulation or Act for reserves to be set aside along rivers other than navigable rivers. It is also significant that these were to be set aside at the discretion of the surveyor. Thus it very likely that many rivers did not have reserves.

LAND ACT 1908:

This Act consolidated the Land Acts and Land Amendment Acts of 1892, 1893, 1895, together with a number of other Acts.

Section 13: Notwithstanding any sale or other disposal of any unsurveyed rural or pastoral lands for cash, or on deferred payment, or for occupation with right of purchase, or perpetual lease in perpetuity, or renewable lease, or in any manner whatsoever, and at any time previous to the approval of the plan of the survey of the same by the Chief Surveyor of the district, the Governor shall have the right to exclude from such sale or other disposal any road-lines which may be required through or over any such lands, and to reserve any of the said lands which are situate on the seashore, the margin of lakes, or on river-banks, or which are required for any of the purposes mentioned in section three hundred and twenty-one hereof, without paying compensation for any land so excluded or reserved.

Section 122: There shall be reserved from sale or other disposition a strip of land not less than sixty-six feet in width along all high-water lines of the sea, and of its bays, inlets, or creeks, and along the margins of all lakes exceeding fifty acres in area, and along the banks of all rivers and streams of an average width of not less than thirty-three feet, and, in the discretion of the Commissioner, along the bank of any river or stream of less width than thirty-three feet.

Section 321: This section repeated Section 235, Land Act 1892.

COMMENT: Section 13 gave the Governor the right to exclude certain lands from sale or other disposal without paying compensation. Section 122 required land to be reserved from sale or other disposition along

water boundaries and gave the Commissioner the discretion in relation to rivers and streams of a width less than 33 feet.

This is a major change from the requirements under the Regulations for Conducting the Survey of Land - 1897

PUBLIC RESERVES AND DOMAINS ACT 1908:

This Act consolidated the 1878 Public Domains Act and the 1881 Public Reserves Act.

Definition of "Public Reserves" and "Reserve"

(a) Land heretofore granted, reserved, or set apart for any of the purposes mentioned in the Second Schedule hereto, by or under the authority of His Majesty's Letters Patent or Royal Instructions, or any Ordinance of New Zealand or of New Munster respectively, or of any Act of the General Assembly, or of any Provincial Ordinance, or by the Governor-in-Chief, Governor, or Lieutenant-Governor, or by the New Zealand Company or its agents, or the Canterbury Association or its agents; and

(b) Any land heretofore granted, reserved, or set apart for any such purposes as aforesaid by any authority whatsoever which in the opinion of the Governor in Council is sufficient; and

(c) Any land hereafter granted, reserved, or set apart for any such purposes as aforesaid by or under the authority of "The Land Act, 1908," or any other lawful authority; and

(d) Any land heretofore or hereafter vested in or acquired by His Majesty or the Governor for any of the purposes aforesaid by purchase, gift, or otherwise:

LAND LAWS AMENDMENT ACT 1912:

This Act was to amend the Law relating to Crown and other lands. and is to be read together with the principal Act, being the Land Act 1908, and was the first Land Act covering the contribution of reserves on private subdivisions in towns.

Section 3 (1) Where any land is subdivided for sale or lease or other disposition as a town, a plan of such subdivision showing the roads and reserves proposed to be made and the proposed name of the town shall be prepared by a licensed surveyor and approved by the Governor in Council before any part of the land is so disposed of or offered or advertised for disposition.

COMMENT: Although this section provides for reserves the type of reserves are not mentioned, however when related to the Land Act 1908 it is clear that reserves along water boundaries could be made.

LAND LAWS AMENDMENT ACT 1920:

Section 17: On the deposit under the Land Transfer Act, 1915, or the Deeds Registration Act, 1908, by the owner of any private land of any plan of subdivision within the meaning of section three of the Land Laws Amendment Act, 1912, all lands shown on such plan as reserves shall be deemed to be vested in His Majesty the King, free from encumbrances, and shall be held as reserves set apart for the purposes indicated on that plan, and shall be subject to the provisions of the Public Reserves and Domains Act. 1908.

COMMENT: This appears to be the first provision for private subdivision to set aside land for reserves which shall be vested in the Crown other than the land to be reserved for schools and along navigable rivers pursuant to the Survey Regulations under The Land Act 1885, and Land Transfer Act 1885. Prior to 11 November 1920 there was no provision for automatic vesting and the subdivider had to complete transfers for the purpose.

REGULATIONS FOR CONDUCTING THE SURVEY OF LANDS IN NEW ZEALAND-1922. RESERVES UPON CROWN LAND

These Regulations were published in the NZ Gazette 1923 p.1809.

Regulation 109: There is to be reserved from sale or other disposition a strip of land not less than 66 feet in width along all high water-lines of the sea and its bays, inlets or creeks, and along the margins of all lakes exceeding 50 acres in area, and along the banks of all rivers and streams of an average width of not less than 33 feet, and, in the discretion of the Chief Surveyor, along the banks of any river or stream of less width than 33 feet.

Regulations 110-114:

Provide for reserves to be made for school sites, millable timber, road metal, tops of ranges, especially sources of streams, and other purposes mentioned in Section 321 of the Land Act 1908.

PART V LAND TRANSFER SURVEYS

Regulation 134:

The foregoing regulations shall equally apply to surveys made under the Land Transfer Act, 1915 wherever they are not inconsistent with the following regulations.

Regulation 141.....When the line of high-water mark is shown as the boundary of a lot a report is required showing how the high-water mark line was defined.

PART VI- SURVEY OF TOWN LANDS

Regulation 159: Where a town is situated on a river or on the seashore an esplanade of a suitable width shall be reserved along its frontage.

Note 'town' as defined in the Land Acts means "any parcel of land outside a borough or town district divided in areas for building purposes" and may include allotments of any size, provided that they are intended for building or residential purposes only,..... Refer Regulation 150.

Regulation 164:

Provides for reserves for public purposes on Crown Lands as enumerated in Section 321 of the Land Act 1908.

COMMENT:

These regulations generally repeat the reserve requirements of the Land Act 1908. Of interest is that Regulation 134 pertaining to Land Transfer Surveys, appears to require reserves as per Regulations 109-114 but Regulation 141 indicates that is not the case.

LAND ACT 1924:

Sections 14,129, and 359 repeat sections 13, 122 and 321 respectively of the Land Act 1908, which provided for reserves along the sea-shore and rivers and streams over 33 feet in width.

PUBLIC RESERVES, DOMAINS AND NATIONAL PARKS ACT 1928:

This Act repeated the Public Reserves and Domains Acts and Amendment Acts of 1908, 1911, 1912, 1914, 1921, 1925.

Section 2:

Defines "Public Purpose" as: Land, whether Crown land or not, shall be deemed to be set apart for a public purposes within the meaning of this Act if it is granted, reserved, or set apart..... in any lawful manner,..... pursuant to any Act, or by will, or by deed, or by other like instrument, for the use, benefit, or enjoyment, or the safety or defence of the people of New Zealand or the inhabitants of any district or locality therein:

"Public Reserve" as: any land set apart for any public purpose, and includes ---

(a) Any land which immediately before the commencement of this Act was a public reserve

within the meaning of the Public Reserves and Domains Act, 1908:

(b) Any land vested in His Majesty which after the commencement of this Act is reserved or set apart under the Land Act, 1924, or other lawful authority as a reserve, or alienated from the Crown for the purpose of a public reserve:

(c) Any land which after the commencement of this Act is vested in His Majesty under the authority of any Act as a reserve:

(d) Any land which after the commencement of this Act is taken, purchased, or otherwise acquired by his Majesty as a public reserve or in trust for any particular purpose:

(e) Any land acquired after the commencement of this Act by a local authority or trustee as a public reserve within the meaning of this Act, and any land vested in any local authority is by resolution of such local authority declared to be set apart as a public reserve:

But does not include:-

(g) Any land taken or otherwise acquired or set apart by the Crown under the Public Works Act, 1928, for any purpose other than that of a recreation-ground, or of an agricultural show-ground:

(h) Any land that may be taken, purchased, or otherwise in any manner acquired by a local authority unless such land is acquired subject to a trust or a condition that it shall be held by the local authority as a reserve:

COMMENT: These definitions relate to land reserved out of Crown Land and private land.

LAND LAWS AMENDMENT ACT 1931:

Section 10: Notwithstanding any statute of limitation, no title to any land that has been in any manner reserved as a road, or street, or for any other purpose, or that has been reserved from sale or other disposition in accordance with the provisions of section one hundred and twenty-nine of the principal Act (The Land Act 1924) or the corresponding provisions of any former Land Act, and no right, privilege, or easement in, upon, or over any such land shall be acquired, or be deemed at any time heretofore to have been acquired, by possession or user adversely to or in derogation of the title of His Majesty, or of any local authority, public body, or person in whom such land has been at any time vested in trust for the purposes for which it has been reserved as aforesaid.

COMMENT:

Section 10 of the Land Laws Amendment Act 1931 which became effective from 11 November 1931 prevented acquisition by adverse possession of land reserved in any manner for roads or of land reserved under Section 129 of the Land Act 1924 or similar provisions of any former Land Act, and other reserves.

See *Barnett v. Waitara Harbour Board* (1932) NZLR. 1263; GLR 660, for an interpretation of Section 10 of the Land Laws Amendment Act 1931.

LAND SUBDIVISION IN COUNTIES ACT 1946

Section 16 Land Act 1924 was repealed by this 1946 Act which dealt with the subdivision of private land outside boroughs and town districts.

Section 3: (1) Where any land outside a borough or town district is subdivided into allotments for the purposes of sale or for building purposes and any allotment, whether it is intended to be sold or not, has an area of less than ten acres, a scheme plan showing the proposed subdivision shall, unless the Minister, with the approval of the local authority, otherwise determines, be prepared by a surveyor and submitted to the Minister for his approval:

Section 11:(1) On every scheme plan submitted under the forgoing provisions of this Act there shall be set aside as reserved for public purposes a strip of land not less than sixty-six feet in width along the mean high-water mark of the sea and its bays, inlets, or creeks, and along the margin of every lake with an area in excess of twenty acres, and, unless the Minister considers it unnecessary so to do, along the banks of all rivers and streams which have an average width of less than ten feet, not being rivers or streams, or parts of rivers or streams, exempted from the provisions of this subsection pursuant to subsection four of this section:

Provided that the Minister may approve the reduction of the width of the strip of land to a width of not less than ten feet if in his opinion the reduced width will be sufficient to give members of the public reasonable access to the sea, lake, river, or stream:

Provided also that nothing in this subsection shall apply with respect to the subdivision of any land which is Native land within the meaning of the Native Land Act, 1931.

- (2) In any case where a strip of land is set aside as required by the last preceding subsection and any land below the mean high-water mark of the sea or of its bays, inlets, or creeks or, as the case may be, any part of the bed of the lake or river or stream is vested in the person in whom the land shown in the scheme plan is vested, the Minister may require as a condition of his approval of the scheme plan that the owner shall execute, or obtain the execution of, and register, a transfer to His Majesty of the whole or a specified part of the land below the mean high-water mark or, as the case may be, of the bed of the lake or river or stream which is vested as aforesaid.
- (3) No land set aside as a reserve, or transferred to His Majesty, pursuant to this section shall be taken into account for the purposes of the next succeeding section.
- (4) The Governor-General may from time to time by Order in Council declare that subsection one of this section shall not apply with respect to the banks, or any specified bank, of any specified river or stream, or part of any specified river or stream, of an average width of less than thirty-three feet.

COMMENT:

This Act clearly provided for reserves to be set aside along water boundaries of rural private subdivisions where the allotment had an area of less than 10 acres and removed any doubts about the requirement for such reserves as indicated in the 1922 Survey Regulations. It also provided for the beds of lakes, rivers and the sea below mean high water mark to vest in the Crown. Subsection 4 has been brought forward into current legislation by giving Councils the opportunity to make rules in district plans relating to rivers for which no esplanade reserve or strip is required.

Land Act 1948:

This Act replaced the Land Act 1924 and brought forward similar provisions to that Act. In particular Section 58.

- Section 58:** (1) There shall be reserved from sale or other disposition of Crown land under this Act a strip of land not less than sixty-six feet in width,-
- (a) Along the mean high-water mark of the sea and its bays, inlets, and creeks:
 - (b) Along the margin of every lake with an area in excess of twenty acres:

(c) Unless the Minister considers it unnecessary to do so, along the banks of all rivers and streams which have an average width of not less than ten feet:

Provided that the Minister may approve the reduction of the width of the strip of land to not less than ten feet if in his opinion the reduced width will be sufficient for reasonable access to the sea, lake, river, or stream.

- (2) The Board may in its discretion determine that the provisions of the last preceding subsection shall not apply to any specified land comprised in a closed road or street which is disposed of under this Act.
- (3) Where any unsurveyed farm land or pastoral land is disposed of on any tenure under this Act the Board may at any time before the approval by the Chief Surveyor of the plan of the survey of the land, and without liability to pay compensation, exclude from the disposition,-
- (a) Any land which may be required for a road:
 - (b) Any part of the land which is situated along the mean high-water mark of the sea or along the margin of any lake or along the bank of any river or stream, and which is required to be reserved under subsection one of this section:
 - (c) Any part of the land which is required for a reserve for any public purpose within the meaning of section one hundred and sixty-seven of this Act.

COMMENT:

The definition of 'Public Reserves' or 'Reserves' in the 1953 Reserves and Domains Act is almost the same as in the 1928 Public Reserves, Domains and National Parks Act.

Lands held under Section 58 do not however come within the definition of a public reserve, and are not subject to the Reserves and Domains Act 1953, (Section 2). They are however commonly called riverbank reserves.

By Section 24(3) Conservation Law Reform Act 1990 these Section 58 areas are now marginal strips and are fixed, not perambulatory like marginal strips created under the Conservation Law Reform Act 1990.

MUNICIPAL CORPORATIONS ACT 1954:

Section 351 (2)

(c) Provided for the Council to require the subdividing owner to make reserves or pay to the Council a sum of money for the purchase of land as public reserves or the improvement and development of public reserves.

COUNTIES AMENDMENT ACT 1961:

This Act repealed the Land Subdivision in Counties Act 1946.

Section 29:

Generally repeated Section 11 Land Subdivision in Counties Act 1946 but added the following proviso:-

Provided that, in the case of commercial or industrial land where access to the sea is essential for the use of adjoining land or in the case of an artificial boat harbour, the Council, with the consent of the Minister of Lands, may dispense with the requirements of this subsection.

COMMENT:

The provisions for the setting aside of reserves are similar to those in the Land Subdivision in Counties Act 1946 but on deposit of the subdivisional plan reserves vest in the local authority subject to the Reserves and Domains Act 1953.

LOCAL GOVERNMENT AMENDMENT ACT 1978:

This Act repealed the Municipal Corporations Act 1954 and The Counties Act 1956 and the amendments to both Acts.

Section 289:

Reserves along areas of water:-

This section provided for 20 metre local purpose reserves under the Reserves Act 1977 to be set aside on any scheme plan of subdivision submitted to the Council and is almost identical to the requirements of the Land Subdivision in Counties Act 1946.

It does however apply to all land, County, Borough, and City.

- (2) Provides for Council to require the subdividing owner to set aside a strip of land contiguous to a strip previously set aside, of a width being not more than the difference between the width of the strip of land previously set aside and 20 metres. That is, a top-up provision.

- (3) Provided that no esplanade reserve was required when the strip of land (reserve) adjoining any allotment having an area of 4 hectares or more and the allotment was intended to be used for farming purposes.
- (5) Where a strip of land is set aside as required by subsection (1) or subsection (2) of this section, and any land below the mean high-water mark of the sea or of its bays, inlets, or creeks, or, as the case may be, any part of the bed of the lake or river or stream is vested in the person in whom the land shown in the scheme plan is vested, the council may require,..... that the owner shall..... obtain..... a transfer to Her Majesty of the whole or a specified part of the land below the mean high-water mark or, as the case may be, of the bed of the lake or river or stream which is vested as aforesaid.

Section 290: Provided for compensation for reserves set aside where they adjoin the mean high-water mark of the sea or its bays, inlets or creeks or along the margin of any lake.

CONSERVATION ACT 1987:

This Act provided for marginal strips which are defined in Section 2 as:

"Marginal strip" means any land for the time being held under this Act for conservation purposes that lies on the high side, and within 20 metres, of -

- (a) Any foreshore; or
- (b) The normal level of any lake with an area exceeding 8 hectares, or of any bay or inlet of such a lake; or

- (c) Along the bank of any river or stream (not being a canal under the control of Electricity Corporation of New Zealand Limited that has an average width of 3 metres or more.

(d) and (e) are exclusions.

Section 24:(1) Provides that subject to the provisions of this section, no interest in a marginal strip shall be granted or disposed of.

(2) Every marginal strip shall be held for conservation purposes, and, subject to sections 18 to 23 of this Act, shall be managed-

- (a) For the conservation of its natural and historic resources and those of the adjacent water; and

- (b) Subject to the conservation of those resources, so as to enable public access to the adjacent water.

CONSERVATION LAW REFORM ACT 1990:

This Act substantially amended the marginal strip provisions of the Conservation Act 1987. By the 1990 Act a marginal strip was redefined in Section 2 (1) as: any strip of land reserved or deemed to be reserved by section 24 or section 24E(3) or section 24G of this Act for the purposes specified in section 24C of this Act; and includes any part of any such strip."

Section 24:(3) Deemed all strips of land, reserved from sale or other disposition on any Crown land to be reserved to the Crown as a marginal strip of the same width.

That is, all Section 58, Land Act 1948 strips became marginal strips. These strips remain fixed. Section 37 Conservation Law Reform Act 1990 repealed Section 58 Land Act 1948.

Section 24 D:(7) Marginal strips do not need to be surveyed.

Section 24 G: Provided that if the water margin of any marginal strip changed for any reason the marginal strip also moved simultaneously, with the water margin.

COMMENT:

Prior to the introduction of the Conservation Law Reform Act 1990, where a road or riverbank reserve lies between the river (or sea or lake) and the land granted, the boundaries of the land as granted will always remain the same (i.e.fixed) no matter to where the river may change. Inclusive with reserves are esplanade reserves (resulting from land subdivision requirements) and strips of Crown land reserved from sale pursuant to the Land Act 1948 and preceding legislation. Hence, "the owner of the land abutting upon a public road is under no liability to give up land to the public use, if the road or reserve adjoining his land is destroyed or washed away, to take the place of the road or reserve so destroyed.

RESOURCE MANAGEMENT ACT 1991:

The provisions pertaining to reserves along water boundaries are generally the same as in the Local Government Act 1974, as amended by the Local Government Act 1978 and are contained in Sections 229-237.

These provisions were repealed in 1993 and replaced in the Resource Management Amendment Act 1993.

RESOURCE MANAGEMENT AMENDMENT ACT 1993:

This new Act provides for Esplanade Reserves, Esplanade Strips and Access Strips to be created on subdivision. Esplanade Strips and Access Strips can also be created by agreement between the land owner and Council.

Esplanade strips are not surveyed and, like marginal strips under the Conservation Act, move with any movement of the water boundary.

Roads (Reserves) Along Rivers:

Between 1890 and 1914 there was much confusion as to the intention or purpose of one chain strips of land along the margins of rivers, sea coast and lakes, and the method of depicting them on plans.

When these strips along water frontages were originally laid off it was the intention that they would be 'excluded' from sale or 'reserved' from disposal.

They are referenced as, 'road', coloured burnt sienna, 'road reserves', coloured pink, or 'reserves', pink.

S.Percy Smith, the Surveyor-General, was concerned that there were different practices in each District as to the name given in grants or certificates to the reservation along river banks and that only one system should prevail throughout the Colony.

By Circular No. 130, dated January 1890 and in terms of the "Surveys Under the Land Act 1885 Regulations' Clause 27, S.Percy Smith requested the Chief Surveyor, Dunedin to ensure "that in all cases where reservations are made along River Banks, Sea Coast, Lakes etc, that they are called Roads, that the official plans showing them be coloured Burnt Sienna and that every such road be shown on the marginal plans of grants or certificates of title as roads."

Later Departmental Circulars amended the opinion and instructions of Circular 130 as follows:

Circular 620 dated 26 March 1904 ".... The matter was referred to Crown Law Officers who are of the opinion that the reservations referred to (i.e. 100 links reservations made along riverbanks under Section 110 of the Land Act 1892) are not roads but are Public Reserves It is considered that such reservations are not intended necessarily for roads, their chief purposes being to prevent the acquisition of riparian rights by land owners."

By Circular No 640 dated July 1904, the Surveyor General, J.W.A. Marchant informed all Chief Surveyors that after consultation with Mr Kensington, "that it has been decided that all roads, whether along the banks of rivers and streams or otherwise, delineated as such upon the public maps, are roads in terms of Section 100, sub-section 1 of The Public Works Act 1894."

By Circular 1001 dated 14 April 1914, the Surveyor General, E.H.Wilmot wrote to the Chief Surveyor, Dunedin as follows:

RIVER- BANK RESERVES

Circular No 130, of the 15th January, 1890, directed that all reserves made along the banks of rivers, streams, lakes, seashore, etc., for the chain width, were to be coloured in burnt sienna, similar to public roads.

This practice having become the rule has led to an alteration in the legal status and control of these reserves, which is not that intended by the enactment governing them, and it is desirable to alter the practice accordingly.

I have therefore to direct that all reservations made under section 122 of the Land Act, 1908, or Regulation No 75, shall be shown upon maps in a red or pink colour, (whenever they are shown in colour at all) and that they shall not, in future, be shown in burnt sienna or brown, as roads are shown.

Seeing that roads are also, for special purposes, occasionally coloured in other colours than burnt sienna (including red) it will be desirable to write upon these reserves, whenever the scale of the maps or other circumstances permit, the words "River-bank Reserve," or a contraction thereof. This direction will not apply to those cases in which it is necessary to lay out actual roads upon the space occupied by these reserves.

Please notify all surveyors - staff and private - in your District, and draw attention to the fact that this direction does not apply to similar reservations made by the Native Land Court, which are best shown as uncoloured, or as partitions of the Native Block.

A following instruction was issued to show all reservations (made under Section 122, Land Act 1908) on maps in red or pink colour and not show them as roads in burnt sienna. It was also considered desirable to label them as "Riverbank Reserves."

COMMENT:

These circulars indicate that there was confusion as to what the 1 chain strips along water bodies were to be called and how they were to be depicted. If they were roads the public had access rights. If they were Road Reserves or River-bank Reserves the question of public access rights is doubtful as they probably remained Crown land reserved from sale. This confusion has not been satisfactorily resolved.

SUMMARY:

The law relating to reserves along water in New Zealand began with Queen Victoria's Instructions to Captain Hobson in 1840. These instructions did not specifically state nor can it be inferred, that reserves for public access to water were to be set aside. Navigable rivers and the coast are mentioned for the purpose of sites for quays and landing places. The requirement to provide for recreation reserves cannot be construed as being what we know today as esplanade reserves or marginal strips. Other legislation and regulation extended the Instructions of 1840 to require reserves on rivers and streams. The most significant change to legislation to provide for reserves along water came with the Land Subdivision in Counties Act 1946. Subsequent Acts have extended, modified or introduced quite radical changes such as marginal strips, esplanade strips, and access strips.

CONCLUSION:

There is no doubt that the writers of the Instructions of Captain Hobson were far sighted but it is considered the popular belief that these instructions gave the public the right of access to all waterways is a myth. Similarly the belief that such reserves could not be disposed of is conclusively dashed by subsequent legislation. There has never been a complete "Queen's Chain" around all waterbodies. There is no automatic right of access to rivers, lakes or the coast in New Zealand despite the widely held public belief and concept that access to waterways is our national birthright and heritage.

The Instructions to Captain Hobson clearly required sites to be reserved on the sea-coast or in the neighbourhood of navigable rivers for quays or landing places.

Current environmentalist thinking seems to interpret this to mean a reserve along all waterways of 3 metres wide or larger.

PANZ
COMMENTARY
See comments about
Abstract - page 2 of
original document

PANZ COMMENTARY
Legal advice to PANZ
is that the "reasonable
access" to the sea, lake,
river, or stream, reserved
under Section 58 (1)
Land Act 1948, was for
public access. Therefore
there was a public right
of access prior to the
CLR Act 1990.

It is also of note that there was no public right of access or recreational use of areas reserved from sale under legislation until the passing of the Conservation Law Reform Act 1990. The public were merely permitted free access to these areas. It is not and never has been the case but government supports the principle of free public access to waterways and is endeavouring by legislation to enable access to be provided. The current legislation still has problems but enables Councils in terms of subdivision consents and by agreement to extend the esplanade reserves and strips, and the Crown to create marginal strips which in time will give the public greater access to water. This legislation also provided for greater conservation measures than earlier legislation.

For a summary of Legislation for Creating and Vesting Reserves from 1840 to 1991 refer to paper entitled:

Reserves and Domains- compiled by P.V. Hughes.

ACKNOWLEDGEMENTS:

I wish to thank Trevor Kerr and John Baldwin for their support and critical comments which have been incorporated in this paper.

LEGISLATION AND REGULATIONS REFERRED TO IN THIS PAPER

1840	Royal Charter and Instructions
1841	Land Claims Ordinance No 2
1842	Land Claims Ordinance No 14
1846	Native Land Purchase Ordinance No 19
1851	Survey Instructions - Sir Thomas Cass
1851	N.Z. Company's Land Claimants Ordinance No 15
1854	Public Reserves Act
1858	The English Laws Act
1858	The Waste Lands Act
1875	The Abolition of the Provinces Act
1875	The Plans of Towns Act
1876	The Counties Act
1876	The Municipal Corporations Act
1877	The Land Act
1877	The Public Reserves Act
1878	Public Reserves Act Amendment Act
1881	The Public Reserves Act
1884	Land Amendment Act
1885	The Land Act
1886	Regulations for Surveys under the Land Act 1885
1886	Municipal Corporations Act
1886	Counties Act
1886	Land Transfer Regulations
1892	The Land Act
1897	Regulations for Conducting the Survey of Land in N.Z.
1908	The Land Act
1908	Public Reserves and Domains Act
1920	Land Laws Amendment Act
1922	Regulations for Conducting the Surveys of Land in N.Z.
1924	The Land Act
1928	Public Reserves, Domains and National Parks Act
1931	Land Laws Amendment Act
1946	Land Subdivision in Counties Act
1954	Municipal Corporations Act
1961	Counties Amendment Act
1978	Local Government Amendment Act
1987	Conservation Act
1990	Conservation Law Reform Act
1991	Resource Management Act
1993	Resource Management Amendment Act

Other Legislation Studied for reference to Reserves along Water:

The Waste Lands Acts
The Maori Acts
The Public Works Acts

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