

DEPARTMENT OF LANDS AND SURVEY

TELEGRAPHIC ADDRESS: 'LANDS'

FOR VERBAL INQUIRIES
PLEASE ASK FOR Mr Snowden

TELEPHONE No. 799 760



OUR REFERENCE:

YOUR REFERENCE:

DISTRICT OFFICE,

~~Private Bag~~
Private Bag
CHRISTCHURCH

25 February 1983

Mr Alan Evans
South Canterbury Catchment Board
P.O. Box 160
TIMARU

Dear Alan

ACCESS TO RIVERS AND LAKES

I refer to your visit and discussions in this office.

The early phases of land legislation were determined by instructions issued by Her Majesty and given effect by the Governor of New Zealand. The Canterbury Association was responsible for land settlement in Canterbury in terms with a charter of incorporation obtained in November 1849 until 1852 when the power of disposal over waste lands reverted to the Crown.

The Waste Lands Act 1854 confirmed regulations then in force and gave the power to issue new regulations. The Canterbury Waste Land Regulations 1856 were made under the authority of this Act and replaced all previous regulations.

Over the years various enactments have been passed to meet changed circumstances covering the administration of Crown land until the current Land Act 1948 came into force.

Keeping the above facts in mind the question of access along banks of rivers and past policies can be considered.

In the early days of settlement the administrators of the day saw a need to make provision for access to and along the banks of rivers, lakes and the sea. In some provinces good provision was made for such access while in others, such as Canterbury, many of the original surveys of land from the Crown made no provision for reserves along the seashore and banks of rivers and lakes. Where provision was made, strips of land of various widths were provided and these were shown on the original plans in a variety of ways. Some were shown as roads, road reserves or reserves, while others were merely shown uncoloured with no identifying note. In these cases the actual status of the areas marked road reserves or reserves is Crown land subject to the Land Act 1948 unless such areas were set apart as a reserve and made subject to the Reserves Act then in force. The original grants of land by the Crown also specifically excluded such areas from the grants.

The need to provide access to and along the banks of rivers was further reflected in the provisions contained in the early Survey Regulations of 1879 and 1886, and such strips provided were shown as stated above on the original plans and were excluded from the original grants.

Due to the different ways such strips were being shown, the Surveyor General in 1890 directed that in future such strips be shown as road and be coloured burnt sienna on the plans. This was done to ensure that there was no confusion in future as to what the actual status of the land was.

The first statutory provision for reserving strips of land along rivers, lakes and the sea is contained in Section 110 of the Land Act 1892. This section provided for such areas to be reserved from sale and they now have the status of Crown land subject to the Land Act 1948. In some cases the authorities of the day still elected to show such areas as being road in which cases the status will still be road unless they have been legally closed.

Section 58 Land Act 1948 is now the current section in force which provides for reserving from sale strips along rivers, lakes and the sea.

The end result is that where a strip of land has been retained along the bank of a river, lake or the sea by the Crown, when effecting the original disposal, such strips will have the status of road if shown as a road on the original surveys and grants, while the rest will have the status of Crown land subject to the Land Act 1948.

All such strips are shown on the plans and titles except in the case of some of the current pastoral leases. Because of lack of adequate survey of the land contained in a number of the pastoral leases, the exclusion of strips of land pursuant to Section 58 Land Act 1948 is covered by a clause incorporated in the lease.

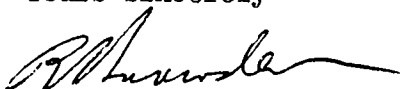
The decree by Thomas Cass in 1851 to which you refer has not been located by me but I would expect it to be found amongst the Canterbury Association papers which are now lodged with the Canterbury Museum.

Evidence on file does indicate that when Thomas Cass was Chief Surveyor in Canterbury he did direct that strips along rivers should be excluded from land to be granted. His direction was not a statutory one and it was entirely at his discretion whether this was done and when it was, the strips excluded had to be clearly shown on the plans and titles.

The question of the public's right to use as access the strips of Crown land reserved from sale has been debated from time to time. While there is no specific statutory right to use such strips as access, the purpose of providing or retaining such strips of land is to preserve a means of access to rivers, lakes and the sea and it is accepted that this gives the public an implied right to use such areas to obtain access.

I trust the above information and comments will be of assistance to you.

Yours sincerely



R.A. Snowden
for Chief Surveyor