“THE QUEEN’S CHAIN”

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INTRODUCTION

The term "Queen's Chain" is often referred to as legal justification by those claiming a right of access to public waterways. I am not aware that the term has ever been used in legislation but it is a popular term to describe publicly owned land, or land with rights of public access along waterbodies. Some commentators have described the "Queen's Chain" as a myth, others consider it is (or should be) a common law right.

BACKGROUND

[A] Crown Land

In 1840 Queen Victoria instructed Governor Hobson to reserve "particular lands it may be proper to reserve" for "internal communications, whether by land or water 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 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". The instruction enjoined and required Hobson to prevent the alienation or private occupation of those lands.

The earliest known provision of general application for public access along waters on the alienation of Crown land was in 1851 when the far sighted Chief Surveyor for the Canterbury Association, Thomas Cass, dictated that one chain from high water mark, one chain from the surveyed edge of all lakes and lagoons, one chain on each bank of the larger rivers and their principal tributaries should be reserved as roads.

A paper by Mr JT Thomson, Chief Surveyor, Province of Otago dated 1861 containing instructions to surveyors, included a requirement to reserve 100 links frontage to navigable waters.

In 1876 on the resumption by General Government of responsibility for surveying Crown Lands (abolition of the provinces) the Surveyor General issued "Instructions for Settlement surveyors on Demesne Lands of the Crown" and these required to "Reserve 100 links frontage to all navigable rivers". A second edition published in 1879 contained the same provision. Section 169 Land Act 1877 contained provision for the Governor-General to make regulations for surveys etc, and while no formal regulations were made under that authority, cases have been noted where strips laid off during the currency of this Act are labelled as "reserve under section 169 Land Act 1877 "

In 1886 survey regulations under the Land Act 1885 were gazetted and these required at least 100 links frontage to all navigable rivers and coasts making the traverse lines, if possible, the boundary of such reservation. Further legislation included: The Land Act 1892 (Section 110), followed by Land Act 1908 (Section 122), and again followed by Land Act 1924 (Section 129).

The Land Act 1948

When Crown land was sold or disposed of, Section 58 of the Land Act 1948 provided that there shall be reserved from sale or other disposition a strip of land not less than 20 metres in width:

1. Along the mean high water mark of the sea and of its bays, inlets and creeks;
2. Along the margin of every lake with an area in excess of eight hectares;
3. Unless the Minister of Lands considers it unnecessary to do so, along the banks of all rivers and streams which have an average width of not less than three metres.

The proviso to Section 58(1) empowered the Minister of Lands to approve the reduction of the width of the strip of land to not less than three metres if in the Minister's opinion the reduced width was sufficient for reasonable access to the sea, lake, river or stream.

It should be noted that although the land was reserved from sale, it was not a reserve under reserves legislation and there was no right of public access.

The Conservation Act 1987

In 1990 the marginal strip provisions of the Conservation Act were enacted. They provide for a 20 metre wide strip to be reserved in Crown ownership. The title of the land disposed of is noted with the condition that marginal strips are reserved alongside the waterbodies and that they move with changes in the waterbody. No surveying is required. The land may be managed by the adjacent landowner.

There is a right of public access. The purpose of marginal strips is defined in section 24(c):

a. For conservation purposes, in particular:
   - i The maintenance of adjacent watercourses or bodies of water, and
   - ii The maintenance of water qualify; and
   - iii The maintenance of aquatic life and the control of harmful species of aquatic life; and
   - iv The protection of the marginal strips and their natural values; and

b. To enable public access to any adjacent watercourses or bodies of water, and

c. For public recreational use of the marginal strips and adjacent watercourses or bodies of water.

The Conservation Act 1987 is at present subject to amendment by way of the Conservation Amendment Bill (No 2).. Clause 12 provides the Minister of Conservation power to reduce the width of a marginal strip on rivers to not less than three metres.

[B] Private Land

Esplanade reserves are quite different from land reserved from sale under the Conservation Act or formerly the Land Act. Esplanade reserves are taken from private ownership when private land is subdivided. This land then becomes part of the public estate.

The Land Act (including requirements for reserves on water bodies) applied to the subdivision of private land from 1885 to 1892. The first requirements for esplanade reserves appeared in the Land Subdivision in Counties Act 1946. The Land Subdivision in Counties Act 1946 only required consent (and therefore reserves) for land in counties (not boroughs and cities) and for allotments of less than 10 acres. Section 11 provided that a 66 feet wide strip of land reserved for public purposes shall be set aside along the coast, lakes over 20 acres and, unless the Minister of Lands considered it unnecessary, rivers over 10 feet wide. The Minister could reduce the width of the reserve to no less than 10 feet if "sufficient to give members of the public reasonable access to the sea, lake, river, or stream". The Governor-General could exempt the requirement from part or all of any specified bank of any specified river less than 33 feet wide. The land taken was a public reserve under the Public Reserves, Domains, and National Parks Act 1928.

The Counties Amendment Act 1961 contained similar provisions to those in the Land Subdivision in Counties Act 1946, including only applying to allotments of less than 10 acres. However, the council (with the consent of the Minister of Lands) could dispense with the strip on rivers or approve reductions to 10 feet on the coast, lakes and rivers if the width was sufficient to give the public reasonable access. The Minister of Lands could exempt all or part of specified banks of specified rivers from the requirement.

Until 1978, no esplanade reserves were required in boroughs and cities but the general reserve contribution provisions applied.

Local Government Act 1974

In 1978, the subdivision provisions of the Counties Amendment Act 1961 and the Municipal Corporations Act 1954 were replaced by Part XX of the Local Government Act 1974 relating to the subdivision of land. Subject to any requirements as to a concept plan, the first step in any proposed subdivision was to have a scheme plan of the subdivision prepared and signed by a registered surveyor and submitted to the appropriate council. Section 289 of the Local Government Act 1974 required that on every scheme plan submitted to a council (unless the council, with the consent of the Minister of Lands, considered it unnecessary to do so) there must be set aside "as local purpose reserves for esplanade purposes under the Reserves Act 1977" a strip of land not less than 20 metres in width:

1. Along the mean high water mark of the sea and of its bays, inlets or creeks; and
2. Along the margin of every lake with an area in excess of eight hectares; and
3. Along the banks of all rivers and streams which have an average width of not less than three metres.

A proviso to Section 289(1) empowered the council, with the consent of the Minister of Lands, to approve the reduction of the width of the strip of land to a width of not less than three metres if in its opinion the reduced width was sufficient to give members of the public reasonable access to the sea, lake, river or stream. There were certain other qualifications and exceptions to the requirements of Section 289 of the Local Government Act 1974.

Resource Management Act 1991

The Resource Management Act 1991 (Sections 229-237) provided for the creation of esplanade reserves on subdivision of land. The 20 metre wide esplanade reserve was to be vested along the mean high water springs of the sea, along banks of rivers and around the margins of lakes. The Minister had the power of waiver. These provisions of the Resource Management Act were repealed in 1993 and replaced by the Resource Management Amendment Act 1993.

Under the Resource Management Act 1991 as amended by the Resource Management Amendment Act 1993, three instruments, namely Esplanade Reserves, Espianade Strips and Access Strips, have been created. Collectively they are termed Esplanade Areas. An esplanade reserve or an esplanade strip has one or more of the following purposes (Section 229):

a. To contribute to the protection of conservation values by, in particular:

   i. Maintaining or enhancing the nature/ functioning of the adjacent sea, river, or /eke; or
   ii Maintaining or enhancing water quality, or
   iii Maintaining or enhancing aquatic habitats; or
   iv Protecting the natural values associated with the esplanade reserve or esplanade strip; or
   v Mitigating natural hazards, or

b. To enable public access to or along any sea, river, or lake; or

c. To enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.

WHAT MAKES UP THE QUEEN'S CHAIN?

Public land along the margin of rivers, lakes and the sea has been reserved under a large number of pieces of legislation. The main categories are:

a. Marginal Strips

These are pieces of land which were retained by the Crown when it alienated Crown land. They are held under the Conservation Act, but most were originally reserved under earlier legislation. The Land Act 1892 (section 15) made provision for land on the seashore or margin of lakes or riverbanks to be excluded from sale. Similar provisions have been reenacted since then - section 122 Land Act 1908, section 129 Land Act 1924, section 58 Land Act 1948. Section 58 strips (and those reserved under earlier Land Act provisions) differ from the marginal strips created under the Conservation Act since 1987, in that they do not move with the waterbody, but rather have fixed surveyed boundaries. In terms of land area, these are the most important category apart from other public reserves.

Conservation Act 1987

Section 24 of the Conservation Act 1987 consolidates the various areas reserved from sale by the Crown under previous Acts and provides that marginal strips 20 metres wide will be reserved from sale on future dispositions by the Crown along the foreshore, lakes or streams wider than 3 metres. These newly created strips move with changes to the margin or course of the adjoining water body.

Marginal strips are 'reserved' for conservation purposes and to provide public access and use of the adjoining water bodies. They may be reduced in width along the coast or waived along rivers and streams provided they are not required or their purpose can be achieved by some other means.

The regime builds on previous provisions that affected the sale of land by the Crown and provides a generally accepted way of ensuring the protection of water bodies and public access in the case of Crown sales, especially to State Owned Enterprises and the issue of Crown Forestry licences. A reasonable attitude has been taken to requests for reductions and waivers when it is clear that it is unnecessary to require a strip. The Act does not provide for the ability to allow a reduction of the 20 metres where it relates to rivers. There is provision for adjoining landowners to be appointed to manage marginal strips.

The Conservation Amendment Bill (No 2) will amend Section 24A of the principal Act to empower the Minister to reduce the width of a marginal strip extending along the bed of a river or stream. The same power presently exists in relation to marginal strips along the landward margins of lakes and the sea.

b. Esplanade Reserves

These are generally pieces of land reserved when private land is subdivided. The legislation under which they are created has changed frequently since esplanade reserves were first created in 1885 (examples are the Land Subdivision in Counties Act 1946, the Municipal Corporations Act 1954, the Counties Amendment Act 1961, the Local Government Act 1974, and now the Resource Management Act 1 99 1). Once taken, esplanade reserves are managed under the Reserves Act.

c. Esplanade Reserve - Resource Management Act 1991

An area of land alongside waterbodies which is surveyed off and vested in the local authority on subdivision. It may be transferred to the Crown or regional councils by agreement. It is a reserve under the Reserves Act. The purpose of the reserve is to provide access and protect conservation values. The reserve is fixed and does not move with changes in the water body. Compensation is payable where the land subdivided is over 4 hectares.

d. Esplanade Strip - Resource Management Act 1991

An area of land alongside water bodies and/or the bed of a water body that allows public access and/or protects conservation values. Land ownership stays with the landowner but the restrictions are noted on the title of the land. The restrictions will be imposed by the local authority as a condition of subdivision consent. The standard restrictions are provided in a Schedule to the Act. The carrying or use of guns, lighting fires, taking animals or vehicles on to the property, laying poison or traps, or removing plants, can only occur if the landowner agrees.

The strip moves with changes in the water body in the same manner as marginal strips under the Conservation Act. The restrictions are binding on future landowners. No surveying is required but the water body(ies) subject to the strip would need to be identified on the survey plan. This will significantly reduce survey costs. It is possible to close the strip if appropriate (eg: lambing) and there are restrictions on use by the public, eg: in relation to guns and dogs. Esplanade strips can be created by agreement and don't require to be triggered by subdivision between landowner and local authority.

e. **Access Strip - Resource Management Act 1991**

A negotiated agreement between the landowner and the local authority for a narrow public pedestrian access way across the landowner's land to or along water bodies. The access strip is similar to a walkway in that the access strip is surveyed, does not move with any changes of the waterbody, is recorded on the land title, and is a type of easement in favour of the council on the land with underlying ownership remaining with the landowner. Restrictions on the public use of the access strip are built into the agreement, eg: dogs, guns and closure for certain reasons.

f. Roads and Road Reserves

There are many riparian formed roads, paper roads and road reserves. There are also some riparian railways, but there is no 'right' of public access to these areas.

g. Other Public Reserves

Many parts of the land held by the Department of Conservation and many local authority reserves are adjacent to or surround waterbodies. For example, in Fiordland, Stewart Island and South Westland most of the coastline and virtually all rivers and lakes are within conservation areas or national parks. In most North Island harbours there are numerous small reserves orignally set aside for boat landing, navigation aid, and other pub purposes.

h. Pastoral Leases

Many pastoral leases include provision that a section 58 strip under the Land Act 1948 shall apply to waterways on the property.

EXTENT OF THE QUEEN’S CHAIN

There has never been a complete "Queen's Chain" around all waterbodies. No accurate estimates exist of what proportion of riparian lands are in public ownership, but 70% is an estimate which has been used in the past.

It should be remembered that hunters, anglers and others have no automatic rights of access to New Zealand rivers despite the widely held public belief and concept that access to our waterways is our national birthright and heritage, and is available through the Queen's Chain. It is not and never has been the case, but recent governments have strongly supported the principle of free public access to our waterways.

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