The Law on Public Access Along Water Margins

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Preface

Public access to the coast, lakes, rivers and streams for all citizens of New Zealand has been a feature of New Zealand land law and practice from the earliest colonial times. The ideal has proved to be the vital thing rather than some of the imperfect attempts which have been made to express it in practice and in law. The foresight of many of the early administrators and the genuine efforts of their successors have kept the ideal alive – indeed it may have become larger in life than it is at law.

Much has been written on the popularly named "Queens Chain", a concept which never has had a universal legal basis and as a consequence, is popularly misunderstood. Whether the term originates from the instructions given by Her Majesty Queen Victoria to Governor Hobson may be debated but today however, the only matter of significance is the factual position[1]. It is clear as a matter of law and of record that the first reservation of a chain along water boundaries was by the direct intervention of Her Majesty the Queen who in 1843 disallowed an ordinance of the Governor and Legislative Council for New Zealand which sought to remove from the law a requirement to lay out a chain strip along the coast[2]. Since then a variety of means have been used to provide public ownership and access along water margins. This paper is designed to illustrate the historical development of the law relating to marginal strips along water, by reference to the statutory enactments which authorised the original retention, or later the vesting on subdivision of marginal strips along the sea coast, rivers and streams and around lakes. Each statutory or quasi-statutory provision is included in the text, or as an appendix together with an explanation of its relevance. All of the definitive statutory provisions which have at any time authorised or impacted upon marginal strips along water are included in full with the aim of achieving an unambiguous statement of the law. As indicated, where appropriate in the text, all of the relevant early ordinances and statutes of the central government of New Zealand have been examined, as have a selection of the relevant ordinances of the provincial governments. One feature is common to all of the early legislation relating to Crown land after

[1] The late J C Parcell in his thesis on the Prerogative Right of the Crown to Royal Metals, published under the auspices of the Minister of Mines, 1959, said at p39 "much could be said about Hobson's instructions and powers and the intentions of the British Government, but the only matter of significance is the factual position …" That is equally true for reservations along water.

[2] As a young man in the 1950s the author can recall elderly persons who came to New Zealand in the late nineteenth century speaking of the rebuke which Queen Victoria gave the first early settlers who had tried to destroy the concept of public access to water. Whilst they clearly attributed the action of the Queen as the source of public access in New Zealand I have no recollection of the term "Queen's Chain" being used by them.

1843 – there were no statutory requirements to reserve marginal strips along water boundaries. What followed in the next fifty years is a unique phenomenon in our land law. The factual reality is that in the period 1840-1892, when most of the "good" land was alienated by the Crown, a chain reservation generally in the form of a public road was laid off along the bulk of the coast and major rivers. This was achieved as land, for which the customary title of the Maori had been extinguished, was granted by the Crown to the settlers. The intended legacy of public access is unfortunately not complete, for there are physical gaps in the reservations in some places and other anomalies such as unexplained omissions which have led to practical problems today. Some difficulties may be explained in an historical context, but are curious nevertheless. For example, as early as 1860 land on the very large Wairarapa coastline was alienated without coastal roads or reserved land[3], whereas in the 1870s roads were reserved along sloping cliff-tops on Banks Peninsula. The first example would have produced practical access if reserved land had been taken, whereas in the second, access has been reserved notwithstanding that in practice it cannot be used. The complete ideal of a "Queens Chain" was not realised but in principle it was substantially achieved, providing all of the people of New Zealand with legal access to much of the sea and many major rivers.

The early decades of settlement in New Zealand were troubled times. Tensions between the Governor, and many if not most of the settlers, over land claims, uncertain relations with Maori, procrastination on the part of the New Zealand Company - which failed to provide titles to purchasers - (ultimately the Company failed and in 1851 company lands were returned to the Crown for granting to purchasers), the setting up and abolition of the provinces of New Ulster and New Munster, and the transfer in 1854 of general powers from the Governor to the provinces (including the power to make Crown grants of land), effectively making multiple Crown grant authorities, all contributed to an environment in which uniform practices in relation to water boundaries in Crown grants were not totally achieved.

Assumptions – Maori Land

As a general rule the law and practice relating to reservations of public land along water boundaries do not apply to Maori land[4]. That position is assumed in this paper, based on observed practice and a perusal of statutory law. This observation is made at the outset and the matter is discussed in greater depth at p29. Some statutory exceptions of a relatively minor nature are listed at p41 - 42.

[3] Esplande Reserves have now been put in place for parts of the coast under modern subdivisional legislation.

[4] "No Queens Chain" article by Huhana Smith Appendix 1 [p49]

Historical Perspective – Margins Set Out on Crown Land

There was no uniform policy expressed in a statute in relation to reservation of public land along water boundaries, until the enactment of s110 of the Land Act 1892. There are four periods in which the concept of provision of a reserved strip along water should be considered prior to 1892.

- pre 1840;
- post 1840, i.e., post the Treaty of Waitangi;
- the period of Provincial Government which ended in 1876; and
- 1876-1892.

Introductory

As much as anything the Queen's Chain as a principle – an expression of intent – is popularly extracted from the instructions from the Queen to Governor Hobson dated 5 December 1840.

Clause 43 of the instructions said[5]:

> "And it is our pleasure and we do further direct you … to report … what particular lands it may be proper to reserve … as places fit to be set apart for the recreation and amusement of the inhabitants … or which it may be desirable to reserve for any other purpose of public convenience, utility, health or enjoyment … 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 … any of the lands specified … nor permit or suffer any such lands to be occupied by any private person for any private purpose."

The instructions do not refer to a strip of water margin land. However, clause 56 required that no land shall be sold "… which the Surveyor-General may report to you as proper to be reserved". There is no evidence that the Surveyor-General opted to reserve all water margin land, i.e., the coast, rivers and streams and lakes. Observed practice throughout New Zealand confirms from early times, that there was partial rather than complete reservation along water boundaries. The early situation concerning reserved land along water is made complex by colonial instructions, which were given to the Governor of New South Wales at a time when New

[5] This is the instruction to the Governor which may be construed to authorise a reservation of a strip along water boundaries. Clauses 37 to 56 of the Instructions are set out as Appendix 2 (p50)

Zealand was a territory of that colony[6]. These instructions pre-dated the instructions to Hobson.

Whilst the Colonial Office was preparing the instructions which ultimately formed the Queen's Instructions of 5 December 1840, a New Zealand Land Bill was drawn up and enacted in New South Wales, in accordance with earlier instructions from the Colonial Office, London. Clause 5 of the bill said:

> "… no grant of land is to be recommended which exceeds 2560 acres, unless specially authorised …; or which 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 for any other purpose of public utility; nor of any land situated on the sea shore within 100 feet of high water …"

Captain Hobson, who had accepted the position of New Zealand Consul in February 1839, received on his embarkation for New Zealand a letter from Lord Normanby, the then Secretary for the Colonies, which read in part:

> "Her Majesty is not unaware of the great natural resources by which that country (NZ) is distinguished … On the other hand the Ministers of the Crown have deferred to the advice of the Committee appointed by the House of Commons in 1836 … in thinking that the increase of national wealth and power promised by the acquisition of NZ would be inadequate compensation for the injury which must be inflicted on a numerous and inoffensive people whose title to the soil in indisputable …"
>
> "The Governor of NSW will, with the advice of the legislative council, be instructed to appoint a Legislative Commission to investigate and ascertain what are the lands in NZ held by British subjects under grants from the Natives ... and it will then be decided by him how far the claimants ... may be entitled to confirmatory grants from the Crown and in what conditions."[7]

On 16 April 1941[8] the new Secretary for the Colonies, Lord John Russell wrote to Hobson informing him that, as New Zealand had become an independent colony prior to the passing of the New South Wales New Zealand Land Act, that Act had been disallowed by Her Majesty the Queen. Subject to meeting exigencies the experience of Hobson may have brought to light the New South Wales Act was to be followed as "a safe and proper guide." Her Majesty directed that Hobson postpone the notification of her disallowance of the New South Wales Act and Lord Russell directed that until Hobson received further instructions, the Act would continue in force

[6] The constitutional basis for an enactment of the New South Wales legislation to apply in New Zealand is set out in Appendix 3 (p54) being an extract from the New Zealand Book of Events, Reed Methuen p275.

[7] Governor Gipps of New South Wales was given a discretion to impose conditions to apply to Crown grants in New Zealand for land previously purchased from Maori. The area restriction of 2,560 acres (4 square miles) along with the 100 foot (1 chain) coastal reservation originate in the Act he passed.

[8] Copies of the letters Lord Russell wrote to Hobson and also to Governor Gipps of New South Wales are included in Appendix 5 (p57)

in New Zealand "… although subject of course to any amendments which may in the interval have been made by yourself with the advice of the legislative council of New Zealand". In June 1841, Hobson repealed the New South Wales Act and the new New Zealand ordinance authorised the Governor for the time being of the New Zealand Colony, to appoint Land Commissioners who were to hear and to validate claims of direct purchase made prior to the Treaty of Waitangi[9]. The Ordinance enacted as No 2 on 9 June 1841 (NZ Legislative Council Ordinances 1841-1853 at p5) following in part and substantially re-enacting the New South Wales Act, required by the proviso to section 6 in respect of purchases validated by the Commissioners, that

> "… no grant of land shall be recommended by the said Commissioners which shall exceed in extent two thousand five hundred and sixty acres, unless specially authorised thereto by the Governor with the advice of the Executive Council, or which 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 other purpose of public utility, nor of any land situate on the sea-shore within one hundred feet of high water mark: Provided also that nothing herein contained shall be held to oblige the said Governor to make and deliver any such grants as aforesaid unless His Excellency shall deem it proper so to do".

In addition to being the first New Zealand enactment to provide for a marginal strip along water, this Ordinance in following Article 2 of the Treaty of Waitangi, provided that all land is exclusively derived from the Crown and thus establishes one of the fundamental principles of New Zealand land law. The preamble to the Ordinance and sections 1 and 2 are reproduced as Appendix 4 (p56).

The stance of the Governor and Legislative Council on the requirement for reserving a strip along the seashore was soon to weaken. The following year, Ordinance No 14 was enacted on 21 February 1842 (NZ Legislative Council Ordinances 1841-1853 p112), to amend Ordinance No 2 principally by removing the limitation of area, and prescribing a new formula for describing land adjoining rivers and the sea. Section 5 said:

> **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, to be as nearly as possible a rectangular figure the breadth of which shall not be more than half its length: 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.

[9] Claims had in fact been lodged under the NSW Act. These were subsumed into the work of the Commissioners appointed under the New Zealand ordinance.

There was no area restriction and no requirement to create a 100 foot wide strip along the high water mark. Ordinance No 14 was disallowed by Her Majesty on 6 September 1843[10]. By royal decree the original legislation requiring a coastal reservation was reinstated. Undaunted, the Governor and Legislative Council in session 3 of the Council, in 1844, by Ordinance No 3 amended Ordinance No 2 of 1841, to make formal provision again for the area restriction of 2,560 acres, and also provide for the 100 foot strip along the coast as required by the Queen. The New South Wales Ordinance and the New Zealand Ordinances of 1841 and 1844 were not, however, legislation of general application. They were enacted to apply to land previously purchased directly from Maori by private deeds, and provided a means whereby claims could either be rejected or approved of by the Crown and if accepted as valid, could be perfected by a Crown grant. The NSW Act and the New Zealand Ordinances were therefore of a narrow compass applying to land claims which were reviewed by the Land Claims Commissioners. Except for a handful of claims, the work of the Commissioners was completed by 1862. The concept of a coastal reserved strip (but not for rivers, streams and lakes) had been preserved in New Zealand from the early purchases from Maori by the action of the Crown – the first Queens Chain.

Notwithstanding the occasional purchase of land to low water mark from Maori[11], the Commissioners nevertheless reserved the full 100 foot strip from high water mark, indicating a strict compliance with the ordinance, the ordinance being preferred over the terms of the deed. A copy of a deed of purchase which was approved as the basis of a Crown grant to Bishop Pompallier excluding 100 feet from high water mark notwithstanding that the boundary in terms of the deed ran "… along the Beach at low water mark …" is included a Appendix 6 (p59). A Crown grant when issued is not a confirmation of the terms of the prior deed for a Crown grant is not a deed inter partes. Rather "the statements in it are the statements of the Crown" – Willis v Solicitor General (New Zealand Privy Council Cases 1840-1932) 23 at 31. The boundary along the sea is determined by the terms of the grant[12]. The application of a doctrine of coastal reservation dates back to the beginning of New Zealand land law.

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[10] Extracts from Titles of Ordinances (1841-1853). Session 1 1841, 4 Victoria, and Titles of Statutes Session 2, 1841-2, 5 Victoria record the enactment of Ordinance No 2, 1841 and of Ordinance No 14, 1842 and show that the latter Ordinance was disallowed. Ordinance No 3, 1844 is also included. These extracts are included as Appendix 7 (p60).

[11] In about three out of every one hundred deeds considered by the Commissioners (estimated by a reading of the deeds) the seaward boundary is stated to extend to low water-mark. There is extensive use of the sea or the shore of the sea as a boundary not specifying either high or low water.

[12] Early legislation also recognised this principle. Take, for example, s48 of the Native Lands Act 1865:

> Such grants … shall vest in the persons therein named such estate or interest in the lands therein described as shall be expressed therein subject nevertheless to such restrictions limitations and conditions (if any) as shall be contained therein in manner aforesaid and shall be conclusive as to the particulars limits and extent of such land and as to the proprietors thereof and shall in all other respects have the legal effect and consequences of an ordinary grant from the Crown.

The Royal intention to reserve a margin along the coast for the use of the public was made clear. The general expression of an intention as couched in instructions 43 and 56 (supra) in relation to water boundary reservation is not explicit. What is significant today is the fact that following action of the Crown in 1843, over the period 1843-1892 water margins were extensively though not comprehensively reserved by the early administrators of the land law. The importance of these early reservations cannot be over-stressed, for the inclusion of a large proportion of our waterways and the coast in the scheme of marginal reservation kept at bay the English law of private ownership of waterways which would otherwise have applied[13]. The reservations created the ethos so very much a part of New Zealand life that the general public has access to our rivers, lakes and the sea. Many other laws and practices now serve as well, but the law-based origin of the reservation along water boundaries lies in the action of the Crown in 1843.

Pre 1840

Purchases of land from Maori date as far back as 1815, but most were made in 1837 - 1939 when the intention of the Government of England to claim sovereignty encouraged speculators to obtain bargains. These purchases were on a grand scale, and 20 years elapsed before all claims were settled by the Land Claims Commissioners. In his report to the General Assembly dated 8 July 1862 “The Report of the Land Claims Commissioner” Francis Dillon Bell the Chief Commissioner noted at p636 that “The whole extent claimed by all classes (classes of claimants) was 10, 322, 454 acres” and went on to say, however, that “The total quantity of land awarded or granted is 292, 475 acres. He said that the total number of claims numbered 1,376. To these private claims there must be added the 20,000,000 acres claimed by the New Zealand Company. This acreage was reduced by the Commissioner separately hearing this claim, to 283,000 acres[14]. Certified copies of the deeds are published with the report of the Land Claims Commissioner. In some instances the report of the Commissioners on an individual deed is annexed to the copy of the deed. Invariably when the Commissioners approved a grant of the land by the Crown of land fronting the sea, a reservation of 100 feet was made by the Commissioners along the shore of the sea. Most of the early purchases from Maori were bounded by rivers, streams, natural features and the sea. There is no evidence in the deeds or reports of the Commissioners of a reservation of a strip along rivers or streams.

[13] The English Laws Act 1858 (UK) provided that the laws of England as they existed on 14 January 1840 should, so far as applicable to the circumstances of New Zealand, be deemed to have been in force here on and from that date.

[14] New Zealand in Evolution, G H Scholefield 1909 at p175.

Post 1840 – Including the Period of Provincial Government 1854-1876

The reservation of a coastal marginal strip in Crown grants issued for early private purchases from Maori, was effected by a direction from the Queen. However, neither the colonial administrators in London, nor the early New Zealand administrators in passing the ordinances and statutes of central government, and later, the ordinances of the provincial governments, legislated for marginal reservations along water frontages when land was authorised to be sold by the Crown to settlers. It would be tedious in the context of public access along water margins, to follow the changes and vicissitudes of the New Zealand land laws over the first 35 years of colonial history except in summary form. The law of New Zealand has its origin in the laws of England and the record is not complete without a description of the legal basis for the subdivision and sale of Crown land under powers granted by the Crown.

The most succinct summary available of the historical land law of New Zealand is that given by A E Currie at p96 of "Crown and Subject", Legal Publications, Wellington (1953). Whilst he states the law up to 1953, unfortunately there are some omissions in his text; these have been supplied as indicated in bold type below.

> Authority to the Governor to make grants of waste land in the name of the Sovereign and under the public seal of the colony was conferred by the Charter of 1840, the enabling authority for which was the United Kingdom Act of 17th August, 1840, 3 & 4 Vict. C.62. The accompanying Royal Instructions of December 1840 made detailed provision for the sale of land and the issue of grants to purchasers: clauses 37 to 56. Cf. *R.* v. *Symonds,* (1847), N.Z. P.C.C. 387 at p.389. By the Australian Waste Lands Act of 1842 (U.K.), 5 & 6 Vict. C.36, s.5, the Governor was directed to convey lands in the name and on behalf of Her Majesty in such form and with such solemnities as might be prescribed by Her Majesty. In 1846, by 9 & 10 Vict. C.104, s.11, passed on the same day as the Constitution Act of 1846, it was declared that the Australian Waste Lands Act of 1842 should no longer apply to land in New Zealand. By clause 14 of the Letters Patent or Charter of 23rd December 1946, issued under the authority of the Constitution Act of 1846, 9 & 10 Vict. C.103, the authorities authorised to issue grants were the Governors of the Provinces of New Ulster and New Munster, using the public seals of their provinces. **The 1846 legislation was opposed in New Zealand by the Governor and not put in place and repealed in 1848. The Constitution Act 1852 (UK) in substitution for the Act of 1846 was preceded by the English laws Act 1854 later replaced by the English laws Act 1858 (UK) and subsequently by the English Laws Act 1908 (NZ). The authority of the Governor to make grants of land was conferred by the Letters Patent creating his office. However,** subsequent exercise and delegation by the General Assembly of the powers conferred by the Constitution Act appear from the Waste Lands Act 1854, the preambles to that Act, the Provincial Waste Lands Act 1854, and a chain of subsequent legislation – **principally the Lands Acts** – down to the present day."

The ordinances and statutes of the colonial central government of New Zealand relating to land alienation after 1843, up until and including the introduction of provincial government, are Ordinance No 20, 17 July 1844 Land Claimants Estates; Ordinance No 4, 25 August 1849 Crown Titles; Ordinance No 15, 2 August 1851 New Zealand Company's Land Claimants; Regulations for the Sale and Disposal of the Waste Lands of the Crown in New Zealand 1853, Waste Lands Act 1854; Public Reserves Act 1854; Provincial Waste Lands Act 1856; Land Claims Settlement Act 1856, Waste Lands Act 1858.

In neither the Imperial legislation nor the ordinances and statutes of the New Zealand Government, with the exception of NZ Ordinance No 2, 1841 (p8 supra) reinstated by Her Majesty Queen Victoria 6 September 1843 and NZ Ordinance No 3, 1844 (p8 supra) (Appendix 7), were there any references to a requirement to lay off reservations along water boundaries. Nor for that matter, was there any truly large scale Crown granting of rural land in the period 1840-1953. *In New Zealand in the Making* (refer footnote 19, p18) J B Condliffe said:

> The first sales in New Zealand were of town sections, for which speculative prices were paid. The revenue derived from land sales in 1841, indeed, though relatively small (£28,540), was more than the total received from sales for the eight years following. After 1842, sales were negligible until they began slowly to pick up in 1848. At the lowest depth of the economic difficulties of the first decade, in 1845, the revenue from this source was only £155. It is to be remembered that land was obtainable also from the Company in its various settlements, but even so, the areas taken up must have been small. In 1852 the total area fenced was only 40,625 acres and the area under crop 29,140 acres…
>
> As far as land sales were concerned, therefore, in this period before self-government, the areas disposed of were small. Both in the Company lands and the Crown lands outside the Company areas, the principle was adhered to of sale at a price not below £1 per acre. No statistics exist which make possible any accurate estimate of the area so alienated.

The example of the decision by Her Majesty to preserve a margin along the coast was no doubt binding on the collective conscience of the Governors, and, later, the land-law administrators in central and provincial government. The extensive, although incomplete, pattern of water margin reservation by employing the device of public roads along water, is a remarkable phenomenon given the absence of statutory backing for the concept. Decisions made subsequently to extend the principle from the coast only to water boundaries along rivers and around lakes, were in keeping with the spirit, if not the letter, of the original instructions by the Queen. Today the only matter of significance is the factual position. The roads legally exist as public roads.

Provincial Government

The New Zealand Constitution Act 1852 (Imperial) which established autonomous government in the colony, concluded the era of government by ordinance and paved the way for the introduction of provincial government. Section 72 says:

> "**General Assembly may regulate sales, etc., of waste lands** – Subject to the provisions herein contained, it shall be lawful for the said General Assembly to make laws for regulating the sale, letting, disposal, and occupation of the waste lands of the Crown in New Zealand; and all lands wherein the title of [Maori] shall be extinguished as hereinafter mentioned, and all such other lands as are described in an Act of the session holden in the tenth and eleventh years of Her Majesty, chapter 112, to promote colonisation in New Zealand, and to authorise a loan to the New Zealand Company, as demense lands of the Crown, shall be deemed and taken to be waste lands of the Crown within the meaning of this Act …"

Provincial Government was introduced in 1854. Under the general and at first nominal supervision of the central government the provinces were to sell the public lands of the Crown at the price they decided upon, control the size of holdings and the method of sale, and retain the profits. Prior to the introduction of Provincial government the Governor promulgated the Waste Land Regulations of 1853, which established comprehensive rules for the sale of Crown land. The Waste Land Act 1854, which confirmed the Regulations of 1853 and other regulations then in force, was enacted (inter alia) to enable the Superintendent and Council of the Province to recommend specific land sales regulations for the Province for the approval of the Governor and Executive Council. The powers of the Provinces were made very comprehensive.

The Foreshore

The foreshore has held a special place in the history of our land law from the earliest times. In the early maps of our cities, e.g., Wellington 1840, Nelson 1842, New Plymouth 1842, Dunedin 1866 roads are shown adjoining mean high water mark reserving access to the foreshore for the public.

One of the notable features of the Reserves Act 1854 enacted at the time when provincial government was introduced, was the protection given the foreshore. Whilst harbour and industrial development along selected water margins were obviously an important consideration in the fledgling colony, the transfer of powers of Crown alienation of the lands of the Crown to the provinces was not to be a means of alienation of a national resource – the foreshore, the land below mean high water mark. Except where title to the foreshore was to be granted to the superintendent of the province, in order to alienate land below mean high water mark, an affirmative resolution of the provincial council confirmed by the superintendent was required, then an affirmative resolution of the Executive Council of central government

and finally a grant from the Governor. This four step process ensured that provincial government could not easily sell the foreshore. Section 2 of the Reserves Act is set out in full in footnote 15 at p14.

Water Boundaries

In relation to water boundaries Reg. 10 of the Waste Land Regulations 1853 says:

> "Every allotment of Rural Land must so far as circumstances and the material features of the country will admit be selected of a rectangular form, and where fronting upon a river, road, lake, or coast, be of a depth from the front of at least half a mile. No such allotment must be selected as to monopolise the wood or water in any particular location".

Reg. 12 says:

> "In districts to where the lines of road are not laid out, a right of road reserved and allowance made in land of three to five percent.
>
> Where lands shall be purchased in districts in which future lines of road have not been determined and laid out, a right of road will be reserved in the Grant, an allowance being made to the purchase for such reserve according to the annexed scale …"

Until the Provinces could promulgate province specific regulations (or take advantage of an existing province specific regulation act or ordinance) these general regulations were in force. They clearly envisaged allotments fronting water boundaries and the reservation of roads as appropriate. There were no express regulations for reserves along water boundaries, but there was a general power to lay out roads which could include a road along water.

The Provinces were quick to exercise their independence and promulgate their own regulations. Representative of the provincial regulations are the Land Regulations 1856 for Auckland and Otago respectively.

Auckland, New Zealand Gazette 1 May 1856 at p81.

Reg. 5 The Superintendent of the said province may, from time to time, and as to him it shall seem meet, reserve portion of the said land for public roads or other internal communication … or for the inhabitants at any town or village or as the sites of public quays or landing places or on the sea coast or shores of navigable streams, or for any other purpose of convenience, health or enjoyment.

Reg. 17 In the case of such allotment being unsurveyed, and bounding a river, road, lake or coast it must be as nearly as possible of a rectangular form, and the depth thereof must be at least three times the length of such frontage and in all cases not to interfere with ... dividing the adjoining land into convenient allotments.

Otago, New Zealand Gazette 12 February 1856 at p34.

Reg 12. "… and the land specified in every application shall so far as the features of the country and the survey of the Province will admit, be of a regular form, and when fronting a river, lake, road or coast be of a depth not less than twice the length of the frontage …"

Reg 16. It shall be lawful for the Superintendent with the advice and consent of the Provincial Council, to reserve from sale and set aside for public use, any land within the province of Otago, and such reserves shall be dealt with by Ordinances of the Superintendent and Provincial Council.

In neither province were there express requirements for reservations along water.

The Waste Lands Act 1854 was followed by the Provincial Waste Lands Act 1856 which was disallowed, over doubts concerning the powers of the General Assembly to delegate the powers it purported to give the Provinces. The Waste Lands Act 1858 repealed the Act of 1854, and provided clear powers of delegation from the Governor to the Provinces. Thereafter, the General Assembly at the request of the Provinces enacted statutes to empower the Provinces with specific powers in relation to the sale of Crown land.

In this respect, a selection of the legislation applying in the provinces after the Act of 1858, illustrates the diversity in the provinces.

Section 33 of the Taranaki Waste Lands Act 1874 says:

> **33.** All land reserved from sale for public highways under the provisions of this Act shall be vested in the Superintendent in trust for the purpose of public highways but so as that such highways may be diverted and otherwise dealt with under the provisions of "The Highways and Watercourses Diversion Act, 1858.

Section 20 of the Auckland Waste lands Act 1874 stipulates:

> **20.** Reserves for public highways bridle-paths and footpaths shall be made by the Superintendent, and shall be set forth on the authenticated maps of the Land Office; and the Superintendent and the Provincial Council may by Act alter the line of any such highways, bridle-paths or footpaths, and may dispose of the land theretofore used for the same.

In Canterbury a different approach was taken, as expressed in provisions of the Canterbury Waste Lands Act 1873:

> **7.** Clause numbered twenty is hereby repealed, and in lieu thereof the following provision is made:- Reserves for public highways, bridle-paths and footpaths shall be made at any time whatever by the Superintendent or the

Board, or by the Chief Surveyor under the authority of the Superintendent, and shall be set forth on the authenticated maps in the Land Office. The Superintendent and the Provincial Council may by Ordinance alter the line of any such highways, bridle-paths and footpaths, and dispose of the land theretofore used for the same.

10. All rural land in the said Province shall be sold subject to a right of laying out a road or roads over the same, if found necessary or expedient on survey; and a Crown grant shall issue to the purchaser or purchasers of any such land, excepting thereout so much thereof as may be required for such road or roads.

Marginal land in the guise of roads along water boundaries was extensively but not consistently applied in the Provincial Period. In this period Central Government codified the law on Crown grants in the Crown Grants Act 1866. Section 12 in respect of water boundaries said:

XII. Whenever in any grant the ocean sea or any sound bay or creek or any part thereof affected by the ebb or flow of the tide shall be described as forming the whole or part of the boundary of the land to be granted such boundary or part thereof shall be deemed and taken to be the line of high water mark at ordinary tides.

This provision clearly was to cover grants where no land along a water boundary was reserved, and implicitly recognised that situation.

Short's Law of Roads and bridges (1907) written at a time when independent commentaries were scarce, states the early position on roads along water at p53:

"As a rule a road is reserved, one chain wide, by the Crown along all high water lines of the sea and of its bays, inlets, and creeks, and along the margin of all lakes exceeding 50 acres in area, and along the banks of all rivers and streams of an average width of 33 fee (see Section 110 of "The Land Act 1892"). This provision has, however, not been always in force, and there are some cases where Crown Grants have been issued which give riparian rights. Thus, if the Crown Grant describes a river as one of the boundaries of the land granted thereby, and such river is a non-navigable one, the title of the owner extends to the centre line of the river. The question as to whether a road exists at any place can be answered by reference to the record maps in the office of the Chief Surveyor of the district."

Short was a qualified lawyer, a Commissioner under the Commissioners Act 1903, The Public Works Act 1905, The Municipal Corporations Act 1900 and other Acts. At the time of publication he was Chief Clerk of the Department of Roads, and had specialised in the law relating to roads in New Zealand for 23 years. His observation is deserving of great respect, and in any event, the records of the public offices dealing with surveys and land titles would confirm the accuracy of the statement he made. The problem with sales of Crown land in this period – at a time of extensive

alienation of the most accessible land – is that there was a lack of consistency even in some instances along the same waterway.

Post Provincial Government 1876-1892

After the abolition of provincial government the legislative structures which have influenced public administration to the present time began to emerge as consolidated statutes. The first Public Works Act of 1876 consolidated and repealed some 109 Acts and ordinances. Section 92 dealt with the stopping of roads and reads:

> **92.** No road shall be stopped unless and until a way to the lands adjacent as convenient as that theretofore afforded by the said road is left or provided, unless the owners of such lands give consent in writing to such stoppage.

The Act of 1876 was repealed by the Public Works Act 1882, in which section 92 was re-enacted as a new section 93 to say:

> **93.** No road shall be stoped unless and until a way to the lands adjacent as convenient as that theretofore afforded by the said road is left or provided, unless the owners of such lands give consent in writing to such stoppage, **and no road along the bank of a river shall be stopped either with or without consent** (emphasis added).

This is an extraordinary legislative provision providing roads along rivers with quasi-constitutional protection, i.e. an act of parliament would be necessary before a riverside road could be stopped. Possibly this far-reaching piece of legislation should not be seen in isolation, for a few years earlier legislation had been enacted to place the foreshore in a similar position, i.e., road closure and dealings with the foreshore required the special scanction of an Act of the General Assembly. Section 147 of the Harbours Act 1878[15] says:

> **147.** No part of the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up as the tide flows and re-flows, nor any land under the sea or under any navigable river,

[15] Restrictions on grants of the foreshore were imposed from the earliest times. Section 2 of the Public Reserves Act 1854, the forerunner of s147 (above) placed Provincial Government under specified controls: Section 2 said:

> 2. It shall be lawful for the governor of the said Colony, with the advice of his Executive Council, 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 always that every such grant or disposition within any Province, other than to the Superintendent thereof, shall be made in pursuance of a joint recommendation by the Superintendent of such Province and of the Provincial Council thereof: Provided also that nothing here contained shall prejudice the rights of persons claiming water frontage.

except as may already have been authorised by or under any Act or Ordinance, shall be leased, conveyed, granted, or disposed of to any Harbour Board, or any other body (whether incorporated or not), or to any person or persons, without the special sanction of an Act of the General Assembly.

Roads along rivers had statutory protection. Roads along the high water mark of the sea or around lakes were not given any special statutory protection. (Note now however s118 Public Works Act 1981 as re-enacted by s362 and the eighth schedule to the Resource Management Act 1991 (referred to below) provides a measure of protection for all stopped roads along all water boundaries).

Section 93 of the Public Works Act 1882 was re-enacted (in each case without amendment) as s121 of the Public Works Act 1894, next as s130 of the Public Works Act 1908 and then as s147 of the Public Works Act 1928. The deathknell for this unique provision concerning roads came in the Public Works Amendment Act 1952 where s12 states:

12. (1) Section one hundred and forty-seven of the principal Act is hereby amended by omitting the words "and no road along the bank of a river shall be stopped either with or without consent".

(2) Section one hundred and forty-seven of the principal Act is hereby further amended by adding the following subsection as subsection two:

"(2) No closed or stopped road or street along the bank of a river or stream or along the margin of a lake or the sea nor any portion of any closed or stopped road or street shall be granted or disposed of or added to any other land or alienated in any other manner without the consent of the Minister of Lands, who in his discretion may refuse his consent or give his consent subject to such conditions as he thinks fit:

"Provided that the consent of the Minister of Lands shall not be necessary in any case where the closed or stopped road is dealt with or disposed of under the Land Act 1948."

The law relating to stoppages of roads along rivers was later to go through two further stages (in 1981 and again in 1991 - illustrated below), and be extended to include roads along the sea coast and lakes.

The Public Works Act 1981 built upon s12 of the Public Works Amendment Act 1952 to read as s118:

118. Consent of Minister of Lands required to dealing with certain stopped roads – Notwithstanding section 117 of this Act, no road or part of a road stopped under section 116 of this Act along –

(a) The bank of a river or stream that has an average width of 3 metres or more; or

(b) The margin of a lake with an area in excess of 8 hectares; or

(c) The mean high water mark of the sea, including its bays, inlets, and creeks –

Shall be granted, dealt with, disposed of, added to any other land, or alienated in any other manner except under the Land Act 1948, without the consent of the Minister of Lands, who in his discretion may refuse his consent or give his consent subject to such conditions as he thinks fit to impose.

Section 118 was repealed and substituted by section 362 of the Resource Management Act 1991, and is now in force as a new section 118 of the Public Works Act 1981:

"**118. Application of other Acts to stopped roads –**

(1) Notwithstanding section 117 of this Act, where any road or any portion of a road along the mark of mean high water springs of the sea, or along the bank of any river, or the margin of any lake (as the case may be) is stopped under section 116 of this Act –

(a) Section 345 (3) of the Local Government Act 1974 comprising the road or portion of the road so stopped if that land was formerly a road vested in a local authority (including a state highway vested in a local authority):

(b) Part IVA of the Conservation Act 1987 (relating to marginal strips) shall apply to the land comprising the road or portion of the road so stopped if that land was formerly a Government road or a state highway or other road vested in the Crown.

(2) For the purpose of subsection (1) of this section, 'lake' and 'river' have the same meaning as in section 2 (1) of the Resource Management Act 1991."

In terms of this section, if the stopped road was formerly vested in a local authority, it automatically becomes an esplanade reserve (s1(a)) and if the stopped road was formerly vested in the Crown (s1(b)), it becomes a marginal strip subject to part IVA Conservation Act 1987. In other words, access for the public is retained notwithstanding the stopping.

Section 147 of the Harbours Act 1878 eventually became section 150 of the Harbours Act 1950 which was repealed by section 362 and the Eighth Schedule to the Resource Management Act 1991 and was not replaced.

The Early Land Acts

The first consolidated Land Act (the forerunner of the current Land Act 1948) was enacted in 1877. This Act was superseded by the Land Act 1885.

Instructions were made under the authority of s169 of the Land Act 1877[16] – The Instructions for Settlement Surveyors on Demesne Lands of the Crown – requiring land to be reserved along all navigable rivers at a width of 100 links. Under the authority of s244 of that Act, a range of sites for docks, quays, landing places etc could be reserved along water margins.

In 1886, Survey Regulations under the Land Act 1885 (New Zealand Gazette 1886 Vol 1 p634) were enacted to apply to Crown land[17].

Reg. 27 said:

> "Suitable sites for schools are to be reserved, about 10 acres in rural districts under 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. 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."

These instructions to settlement surveyors and Reg. 27 of the Survey Regulations 1886 were the first national riverside requirements to be put in place.

A perusal of s169 and 244 of the Act of 1877 and of s4 and s227 of the Act of 1885, may indicate that in respect of the marginal strip requirements along rivers these regulations could be ultra vires and unlawful, as the reservations were not specifically authorised. However, as in the period before 1892 these strips were reserved as roads – and there was ample authority to lay off roads.[18] Thus the issue of the legality of the regulations which in context are instructions by the Government to its employee surveyors may not be of great importance. What the regulations did show, was an awareness of a need for a national policy. That policy was to authoritatively emerge as section 110 of the Land Act 1892.

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[16] Relevant sections of the Land Act 1877 and the Land Act 1885 are set out as Appendix 8 (p61-62)

[17] It is worth noting that at the time when the survey regulations under the Land Act 1885 were gazetted, regulations under The Land Transfer Act 1885 were also put in place effectively as part of the Land Act regulations. The Land Transfer Regulations (to apply to the survey and subdivision of private land) commenced at Reg 112 following on from Reg 111 of the Land Act regulations as a subset of the detailed Land Act regulations.

Regulation 112 says:

> "The Regulations 1 to 85 of even date herewith under "The Land Act 1885" shall apply equally to surveys under "The Land Transfer Act 1885" whenever they are not inconsistent with these sales."

There is no rule of statutory construction which would make Reg 27 of the Land Act Regulations apply to surveys undertaken for the purposes of the Land Transfer Act. Legislation would be required to take reserves etc out of privately owned guaranteed land titles. Regulations could not achieve that result. It was not until 1946 that general legislation (The Land Subdivision in Counties Act 1946 ante) authorised the compulsory taking of water boundary reserves in private subdivisions.

[18] Refer to Royal Instruction 1840 para 37 (Appendix 2 p50) and the section on Provincial Government (supra).

Probably the best summary of the alienations made up until 1892 is contained in an appendix to the first Official Year Book (1892) which includes the following table[19]:

	Million Acres
Freehold	13.6
Held by lease and with right of purchase	1.7
Held on lease from the Crown	12.5*
Reserved for public purposes	6.6
Crown lands	8.4
Midland Railway Company	4.0
Native lands	10.8
Barren, lakes, etc.	9.0
	66.7

* Of this area, 11.8 million acres were held on pastoral lease.

Land Act 1892 – The Law Applying for the Next 56 years

The enactment of s110 and the companion s15 of the Land Act 1892 initiated the modern era of law relating to marginal strips along water boundaries. For the first time legislation directed that land was to be reserved from sale or other disposal of Crown land along the sea coast, rivers and streams of a specified width and around lakes of a stated area.

Section 15 reads:

> **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

[19] J B Condliffe D.Sc (Research Secretary, Institute of Pacific Relations, formerly Professor of Economics, Canterbury College, Christchurch, New Zealand; Sometime Sir Thomas Gresham Student, Gonville and Caius College, Cambridge) in his text "New Zealand in the Making" 1927, George Allen & Unwin Ltd, London in commenting on this table went on to say:

"The Crown lands sold for cash between 1856 and 1891 totalled 10.7 million acres. To this total should be added the area sold before 1856, approximately 3 million acres. In 1927 the total area made freehold by sale amounted to 17½ million acres, so that in the twenty-six years from 1891-1927 less than 4 million acres were sold in all the various ways in which sale was possible. Sales of Crown land, which in the five years 1873-7 averaged 607,000 acres annually, have dropped in the five years 1923-7 to 20,000 acres annually, supplemented by leases of various kinds (which may later be turned into freehold) to the annual extent of 105,000 acres. Very little of the land now being disposed of can be compared either in quality or in accessibility with the land sold in earlier periods. It is to be remembered also that very large areas, totalling five million acres in 1892, were disposed of by free grants in the earlier period, a system that has entirely ceased since the policy of conservation was introduced … a sense of proportion can be maintained only when it is remembered that the overwhelming bulk of the best land of New Zealand had passed into private ownership before 1892."

purposes mentioned in section two hundred and thirty-three, without paying compensation for any land so excluded and reserved.

Section 110 says:

> **110.** 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 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.

The law stated in these sections was significant and substantive, and proved to be durable. The requirement for special sites to be reserved which was first expressed in the Royal Instructions of 1840, was embodied in s15. Section 110 was new. The law as stated in these sections remained the law for the next 56 years until amended by s58 of the Land Act 1948. In the meantime, when the Land Act 1892 was replaced by the Land Act 1908 sections 13 and 122 of the latter statute were identical to sections 15 and 110 of the Act of 1892. When the Land Act 1908 was repealed and replaced by the Land Act 1924, section 14 repeated s13 of the Act of 1908 with minor drafting amendments and s129 is identical to the previous s122. Whilst s58 of the Land Act 1948, the statute which repealed and replaced the Land Act 1924, retained the structure of s129 of the Act of 1924 and its predecessors, the new provision in 1948, made some significant changes to the law (dealt with later). Sections 13 and 122 of the Land Act 1908 and sections 14 and 129 of the Land Act 1924 are included in full as Appendix 9 (p64).

Although from 1892 onwards the law was clearly stated the actual status of marginal strips has nevertheless been a cause of some confusion. Prior to 1892 marginal strips had been shown on the record plans as roads. What was the status of marginal strips post 1892? Were they roads or reserves? From an administrative perspective the issue was clarified in 1914 when the Surveyor-General, E H Wilmot, introduced the modern concept of distinguishing the strips from roads, colouring them red or pink on the plan. If possible the strip should be labelled “River-bank Reserve”. The language of s110 and subsequent sections “These shall be reserved from sale or other disposition …”, does not create a “reserve” in the sense of a reserve subject to the early Public Reserves and Domains Acts and succeeding statutes. J A B O’Keefe in “The Law and Practice relating to Crown Land” Butterworths, Wellington (1967) notes at p8 in respect of reservations from sale “These are not “reserves” *stricto sensu*, but remain part of the allodium until another step is taken e.g. setting apart as a reserve or proclamation as road etc”. In other words, the marginal strips which are not road are strips of

Crown land and not reserves dedicated to some specific public purpose. Reserving land from "… sale or other disposition …" does not create a legal reserve; the land is merely retained by the Crown.

The legal distinction between these strips and roads is so important, that the law relating to roads should briefly be enlarged upon. Section 43 of Transit New Zealand Act 1989 currently contains the definition of what is a "road" as previously was included in the Public Works Acts[20], i.e., *"Road means a public highway whether carriageway, bridle path, or footpath; and includes the soil of:*

(a) Crown land over which a road is laid out and marked on the record maps …"

From a brief consideration of the law relating to roads, and the law relating to reservations from sale or other disposal of Crown land, two principles emerge.

1. If a marginal strip is shown on the record plans as road whether before or after 1892, the status of that land is public road. In this respect, despite the provisions of the Act of 1892 authorising the exclusion of a marginal strip as Crown land, if a surveyor over the period 1892-1914 showed the strip as road, i.e., coloured it burnt sienna on the record plans that strip is legally a road. If a strip alongside water at any time up to the present is shown as a road, that strip is a road not a "reserve".

2. If land is shown as a strip reserved from sale along water on Crown plans, whether before or after 1892, that strip is Crown land.

Land Act 1948

After 56 years of administration in terms of the provisions introduced in 1892 in respect of water margins, the new Land Act of 1948 in s58, retained the basic principles of the earlier legislation, but enlarged the scope of reservations. The new section required strips 66 feet wide (20 metres) along the coast, along rivers and streams more than 10 feet wide (3 metres) down from 33 feet (10 metres) in earlier legislation, and on the margins of lakes more than 20 acres (8 hectares) down from 40 acres (20 hectares).

The Minister had the power to approve a reduction of the 20 metre strip width to 3 metres (proviso to subsection (1) (c)). The obligation to reserve the strips also related to unsurveyed Crown land and to pastoral land being

[20] (i) Public Works Act 1981: s121
(ii) Public Works Act 1928: s110
(iii) Public Works Act 1908: s101
(iv) Public Works Act 1905: s101
(v) Public Works Act 1894: s100
(vi) Public Works Act 1876: s79

leased long-term. Strips were required on any leased land and could be created at lease renewal without compensation.

Section 58 was to apply for over 40 years. It was repealed by the Conservation Law Reform Act 1990 (s37 and the Schedule to that Act).

Section 58 is set out below.

Land Act 1948

58. Land reserved from sale - (1) There shall be reserved from sale or other disposition of Crown land under this Act a strip of land not less than **[**20 metres**]** in width –

(a) Along the mean high-water mark of the sea and of its bays, inlets, and creeks:

(b) Along the margin of every lake with an area in excess of **[**8 hectares**]**:

(c) Unless the Minister of Conservation considers it unnecessary to do so, along the banks of all rivers and streams which have an average width of not less than 3 metres:

Provided that the Minister of Conservation may approve the reduction of the width of the strip of land to not less than 3 metres 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 (1) of this section:

(c) Any part of the land which is required for a reserve for any public purpose within the meaning of section 167 of this Act.

[(4) The renewal under this Act of any lease or licence granted under any former Land Act shall if the Board considers it to be equitable and in the public interest and so determines, be deemed to be a disposition of land for the purposes of subsection (1) of this section.**]**

[(5) Nothing in this section shall limit the provisions of section 60 of this Act in relation to any land reserved from sale or other disposition under this section.**]**

In subs. (1) (b) the expression "8 hectares" was substituted for the expression "20 acres" by s. 3(1) (b) of the Land Amendment Act 1972.

In subs. (1) (c) and the proviso thereto the words "of Conservation" were inserted by s. 65(1) of the Conservation Act 1987, and the expression "3 metres" was substituted for the expression "10 feet" by s. 3 (1) (c) of the Land Amendment Act 1972.

Subs. (4) was added by s. 2 of the Land Amendment Act 1960.

Subs. (5) was added by s. 2 of the Land Amendment Act 1962.

The Conservation Act

The Department of Conservation was formed in 1987 under the Conservation Act 1987. In that Act, a definition of marginal strip was inserted in s2, and s24 dealt with marginal strips. At this point in time s58 of the land Act 1948 was left untouched and continued to apply in an uneasy relationship with the new s24. The provisions of the Conservation Act relating to marginal strips were untidy and unsatisfactory but noteworthy in that s24(2) placed primary emphasis on conservation values, and made public access subordinate to conservation principles. There is little point in pursuing the provisions of the Conservation Act 1987 any further, for in 1990 section 24 was repealed by s15 of the Conservation Law Reform Act 1990 which in substitution inserted a new Part IVA in the Principal Act. Please refer to Appendix 10 (p65-81), where Part IVA is set out in full together with amendments.

Section 58 of the land Act 1948 is repealed by s37 and the Schedule to the Conservation Law Reform Act 1990.

Part IVA is highly prescriptive and cannot easily be summarised. The following points may highlight some key provisions.

1. *Unders24(3) "Every strip of land of any width that, immediately before the commencement of this section was reserved from sale or other disposition on any Crown land by or under this Act or any other Act, whether or not the strip was reserved for any specified purpose, shall be deemed to be reserved to the Crown as marginal strips of the same width".*

   Legal but unformed roads are not included in the strips which are marginal strips under the Conservation Act. The maxim is "Once a road always a road"[21].

2. A very wide range of dispositions by the Crown trigger the marginal strip requirements. Note subsections (6), (7), (7A), (8) and (9) of s24.

3. There is power to reduce the width of a marginal strip: s24A.

4. There is power to increase the width of a marginal strip: s24AA.

5. There is power to exempt a disposition from marginal strip requirements: s24B.

6. The purposes for which marginal strips are held, are prescribed in s24(C). Among the six stated purposes is "To enable public access to any adjacent watercourses or bodies of water …". The emphasis is, however, on conservation values, although in fairness the access aspect is stated more strongly than it was in the original s24 of the Act of 1987.

The Conservation Act was enacted at a time when the Government wished to transfer the bulk of the commercially viable Crown estate to State-owned Enterprises with an intention that much of the land eventually should pass into private hands. It was clear that the transfer of the land could not proceed under existing rules relating to reserved land along water boundaries. Surveys of reserved land would have been required, and given the number of land parcels involved, surveys could not have been completed in a reasonable timeframe and at a reasonable cost. The concept of an ambulatory marginal strip not fixed by a survey, but noted on the title to the land was devised to allow the transfers to proceed. The concept was extended to all Crown alienations. Sections 24D and 24G have particular application. Provision was made in s24H for managers to be appointed to manage marginal strips and by s24H (4)(b) the manager of a marginal strip shall – "enable members of the public to have access along the strip".

[21] Attorney-General and Southland County Council v Millar XXVI (1906) NZLR 348

Reserves Along Privately-Owned Water Boundaries

If the principle of reservation of a strip along water boundaries had been applied from the inception of the Colony, there would be no need for the development of water margin legislation relating to private land. Whilst extensive reservations were made as road along the seacoast, some lakes and along major flowing waterways in the period 1840-1914, inconsistencies, possibly a failure of knowledge, and an incomplete commitment, have created a large number of privately owned riparian titles.

The Land Subdivision in Counties Act 1946

Rural subdivision (i.e. outside of Cities and Boroughs) was controlled under the Land Acts[22] until the Land Subdivision in Counties Act 1946 came into force on 1 January 1947. Land subdivision laws initially related to sub-divisions of Crown land, and the language of the early sections was precise "There shall be reserved from sale or other disposition …" The strip was reserved from sale – it was not, however, a public reserve. The Land Sub-division in Counties Act applied to privately owned land. Section 11 of the Land Subdivision in Counties Act stated "On every scheme plan submitted under the foregoing 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 …" etc. This land by virtue of s13(2) was vested in the Crown as a reserve subject to the Reserves and Domains Act 1953. The legal status of the new type of reserves (as an "official" reserve dedicated to a public purpose) is quite different from the land reserved from sale on the sale of Crown land.

The Land Subdivision in Counties Act required a scheme plan to be approved by the Minister of Lands when land was subdivided into allot-ments of less than 10 acres. The Act did not apply to the creation of allotments larger than ten acres, which could be established as of right, without any consent of either the county or the Minister. Marginal strips were therefore required to be reserved along water boundaries of allotments under 10 acres and not otherwise. The marginal strip requirements did not apply to Maori land (s11(1) second proviso).

Section 11 is reproduced as Appendix 11 (p82).

[22] This was a very limited form of control applying to Towns in rural areas. See for example s16 of the Land Act 1924. In the context of reserves along water there would be very limited application and these subdivisions are not included in this discussion. For the sake of completeness the relevant sections are summarised at p39.

Municipalities

Subdivisional legalisation applying in cities and boroughs, up until The Local Government Amendment Act 1978 came into effect on 1 April 1979, did not compel private subdividers to provide reserves along water boundaries. Reserves along water were optional. The sections applying to subdivision in the Municipal Corporations Acts did not specify any water boundary requirements: s335 Municipal Corporations Act 1920; s332 Municipal Corporations Act 1933; ss350-353 Municipal Corporations Act 1954. The Local Government Act 1974 was the first subdivisional legislation to apply compulsory water margin requirements in Municipalities (see below).

Counties Amendment Act 1961

The Counties Amendment Act 1961 phased out the control of the Minister of Lands over subdivisions in Counties by repealing the Land Subdivision in Counties Act 1946. Section 29 of the Counties Amendment replaced s11 of the Land Subdivision Act in respect of reserves along water margins. In 1964, the Counties Amendment Act inserted a new section (1A) in section 29, to restrict the creation of water boundary reserves to allotments of less than 10 acres in area. In 1974, the Government decided to repeal section 1A to speed the process of providing access along water. In other words, the reserves legislation was to apply to all allotments in a subdivision regardless of size, providing the intersecting or adjoining river or stream had an average width of more than five metres. If the waterway had an average width of between three and five metres, reserves were to be restricted to allotments of less than four hectares. Section 28 of the Counties Amendment Act 1974 which effected the change in the law is included along with s29 of the Counties Amendment Act 1961 in Appendix 12 (p83).

The decision to apply the reserves requirement to all allotments regardless of size created consternation in Parliament, and great animosity in the rural community. Because of the requirement that the full length of the reserved strip be surveyed, the cost of rural subdivisions of larger farms was greatly increased. The exemption from reserve requirements for allotments of over 4 hectares was reinstated in section 4(3) of the Counties Amendment Act 1977, and maintained in s289(3) of the Local Government Act 1974 (as inserted by the Local Government Amendment Act 1978).

Section 29(4) empowered the Minister of Lands to exempt from reserve requirements the banks of any specified river or stream.

The Local Government Act 1974

The Local Government Amendment Act 1978 inserted a new Part XX of the Local Government Act 1974 which repealed the subdivisional parts of the Counties Amendment Act 1961 and the Municipal Corporations Act 1954. Thenceforth counties, cities and boroughs were to apply identical legislation.

Section 289 of the Local Government Act 1974 (reproduced as Appendix 13, p86) provides a code for reserves along water. Originally these reserves were under subsection (1) to be local purpose reserves, subject to the Reserves Act 1977 "… for the purpose of providing access to the sea, lake river or stream as the case may be and to protect the environment …" Later, by the Reserves Amendment Act 1979, these reserves become esplanade reserves.

The exemption for allotments over 4 hectares was reaffirmed in s289(3), but in cases where an owner voluntarily provides a marginal strip along a water boundary where the allotment does have an area of over four hectares, under the authority of s290, compensation may be paid to the owner.

Section 289 built on the principles established in the Land Subdivision in Counties Act 1946 and the Counties Amendment Act 1961. In retrospect, it established a holding pattern rather than new law. That was to come in the Resource Management Act 1991, where a radical review produced new concepts. The focus is shifting from ownership of strips (whether by the Crown or the local authority), to the provision of access.

The Resource Management Act 1991

This is a highly prescriptive piece of legislation which is better considered by a direct reading of its provisions. The Resource Management Act commences in resounding terms. Section 6 sets the stage:

> **6. Matters of national importance** – In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:
>
> (a) The preservation of the natural character of the coastal environment (includeing the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
>
> (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

The provisions dealing with access inserted in the Act as originally enacted were found to be wanting, and section 124 of the Resource Management Act 1993 repealed sections 229 to 237, and inserted substitute sections 229 to 237 and new sections 237A to H. These sections are reproduced as Appendix 14 p90-108.

The devolution of responsibilities in recent years by central government to local government in the context of water margin provisions, has included powers to create, waive or reduce esplanade reserves along water margins by way of district plan rules. Formerly, waivers or reductions had been a responsibility of the Minister of Conservation, in a line of responsibility that reaches back to the Land Subdivision in Counties Act 1946, and had previously been a function of the Minister of Lands before counties were permitted to approve subdivisions. The breadth of discretion provided in s230 – Requirements for esplanade reserves or esplanade strips – could lead to some uncertainty as to when an esplanade reserve a strip will be required. The district plan review process would, however, provide the Department of Conservation or the citizen with the opportunity to make submissions if reserves are not intended for creation in places where they may consider a reservation to be appropriate.

The contention which surrounds the creation of reserves is illustrated yet again in the Resource Management Act 1991 as originally enacted. Although the debate which surrounded the imposition of reserve requirements in 1974, to affect lots of over four hectares and the repeal of that requirement a few years later, was comparatively recent in legislative terms, section 230(1)(a) enacted in 1991 applied the esplanade reserve provisions to any land being subdivided. Section 230(3) as enacted by the Resource Management Amendment Act 1993, restored the requirement that a reservation may be imposed on subdivision against an allotment of under 4 hectares. The result is of course, a slowing of the establishment of continuous access along water margins.

Section 229 in the form enacted in 1993 details five conservation principles, and an access right for the public, and a recreational use right, as the basis of establishing either esplanade reserves or esplanade strips. An esplanade reserve by s231(1) shall be set aside as a local purpose reserve for esplanade purposes under the Reserves Act 1977 and shall vest in and be administered by the territorial authority. Section 23 of the Reserves Act 1977 says:

> *… nothing in this paragraph shall authorise the doing of anything with respect to any esplanade reserve … that would impede the right of the public freely to pass and repass over the reserve on foot, unless the administering body determines that access should be prohibited or restricted to preserve the stability of the land or the biological values of the reserve.*

The Resource Management Act in making provision for esplanade reserves carries forward existing law, which makes esplanade reserves public purpose reserves subject to the Reserves Act. There are special provisions applicable. For example section 237D authorises transfers of esplanade reserves to the Crown or regional council.

Whilst the reserve concept is an old one the Resource Management Act provides for new means of securing access along and to water. Section 232 authorises the creation of esplanade strips of a width specified in a rule in a district plan. An instrument made between the territorial authority and the subdividing owner may be registered under the Land Transfer Act 1952. Under s233 when a water boundary moves "a new esplanade strip coinciding with such alteration shall be deemed to have been created simultaneously with each and every such alteration within the allotment". Esplanade strips may be varied or cancelled: s234. Esplanade strips may be created by agreement: s235 (amended by Resource Management Amendment Act 2003). Such strips need not be surveyed: s237.

Access strips may be created by agreement between the registered proprietor and the local authority in the nature of an easement over the land: s237B. Access may thus be provided over land, to link with legal access along rural coastlines and along rivers and streams. The instrument may be registered under the Land Transfer Act.

Compensation must be paid under the Resource Management Act for the extra width of esplanade reserves or esplanade strips beyond 20 metres width, from a subdivision with lots smaller than 4 hectares. Where the lots are larger than 4 hectares, the council must negotiate compensation with the registered proprietor if it wants reserves or strips. These provisions greatly enhance the opportunities for the local authority to secure improved and continuous practical access for the public or to protect conservation areas.

Maori Land – A Category of Its Own

The greater part of the reserved water margin pattern which exists today, was established over general land in the period 1853-1892 by the laying off of roads along significant water boundaries. This was the period when after Maori title had been extinguished, settlers took Crown grants to the best and most accessible land. Concurrently (or nearly so), in the period 1862 to 1909, almost all Maori customary land was converted to Maori freehold land. But Maori customary land did not admit of the attributes which would permit a coastal or riverside reservation to the Crown. The reservation of boundary margins over general (non-Maori) land was based on plans of survey, and Crown grants which excluded the land reserved. There was underlying Crown title to both the land granted and the land reserved. Maori ownership according to ancient custom was obviously not based upon survey plans and Crown grants. Although the conversion of Maori customary land to Maori freehold (i.e., a written title) was perfected by a formal grant of the land from the Crown, the basis of the paper title was an investigation of ownership rights by the Maori Land Court. The Court provided the Governor with a certificate of ownership that authorised the Governor to make the grant. There has never been power to grant customary title as freehold to anyone other than the customary owners. If there were to be a strip, it would have to be taken, not reserved. In a nutshell, this is the reason why the Queen's Chain was not established over Maori land.

The classic description of customary ownership along rivers was provided by Judge Browne of the Maori Land Court in the original proceedings for investigation of title to the bed of the Wanganui River in a judgment on 29 September 1939[23]:

[23] No consideration of Maori ownership of riverbeds and banks may be placed in current perspective in the absence of reference to *In re the Bed of the Wanganui River* (1962) NZLR 600 and the 25 years of litigation which preceded that decision. In that time the Maori Land Court, The Maori Appellate Court, the then Supreme Court, a Royal Commission in 1950 and the Court of Appeal (on two occasions) considered the principles of law distilled from Maori custom and usage and the application of appropriate English freehold law. The above passage by Judge Browne was approved by the then Supreme Court in The King v Morrison (1950) NZLR 247 at 255, and in the second and final hearing in the Court of Appeal (1962) 600 at 608 per Gresson P, at 612 per Cleary J and 621 per Turner J.

The headnote (at p600) for the second hearing in the Court of Appeal (supra) provides a precise statement of the decision of the Court:

"Where a block of land fronting on a non-tidal river has been held by Maoris under their customs and usages and later the title has been investigated and separate titles issued, the bed of the land adjoining the river becomes *ad medium filum* as part of that block and the property of the respective owners of that block.

The fact that a whole tribe may have exercised a right of passage over the river and that eel weirs and fishing devices placed by individuals or *hapus* were not rigidly limited to the portion of the river immediately adjacent to the bank occupied by such individuals or *hapus* does not negative the application of the *ad medium filum* rule.

So held, by the Court of Appeal (Gresson p., Cleary and Turner JJ.).

> "This Court in all its experience of native land and the investigation of the title thereto, never once heard it asserted by any Maori claimant that the ownership of the bed of a stream or river running through or along the boundaries of the land the subject of investigation, whether that stream or river was navigable or not, was in any way different from the ownership of the land on its banks. Nor has it ever heard it denied that the tribes or *hapus* that owned the land on the banks of a stream or river had not the exclusive right to construct eel weirs or fish traps in its bed or exercise rights of ownership over it. The river bed being a source of food in ancient times would be looked upon as a highly important asset to any tribe and the right to it would be very jealously guarded by the members of that tribe."

Marginal land along river and stream boundaries is part of the customary title of Maori, and part of their freehold title when customary land becomes freehold land. Marginal land around lakes and along the coast on the upland of the water, i.e., above mean high water mark or the upland margin of fluctuating inland lake beds, would similarly originally have formed a part of the adjoining customary land, and later the freehold of that same land.

The physical dimension of ownership of Maori land along water margins can be described with reference to the customary rights obtained by usage in the past. Has statute law made any impact?

Although the instructions from the Colonial Office in 1846 made provision for a Court to deal with Maori land, nothing was done until the Native Land Act 1862 was enacted. The Court did not begin operations until 1865 when in that year a further Native Land Act repealed the Act of 1862. The Act of 1865 had far-reaching effects, for the Court was empowered to issue a certificate converting land from customary to freehold tenure which could be

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Further held (per Turner J.). Whatever was originally the nature of the customary title to lands which have come before the Maori Land Court for investigation, the incidents of the titles which the same Court has issued and certified are, and always have been, the incidents of English freehold titles."

More recent judicial opinion has queried (in some respects) the correctness of the Court of Appeal decision in re the Bed of the Wanganui River – notably Cooke P in Te Runanganui o Te Ika Whenua Inc Soc v Attorney-General (1994) 2 NZLR 20 at 26 where he said "… the Waitangi Tribunal have adopted the concept of a river as being Taonga. One expression of the concept is "a whole and indivisible entity, not separated into bed, banks and waters". However, at this point in time the Wanganui case continues to state the law, i.e., the second decision of the Court of Appeal. The adjoining owners of Maori land own the bank and the bed to the centre line if there are separate owners on either side and the whole of the bed if the river intersects the title.

The first of the Court of Appeal cases on the Wanganui River (reported at (1955) NZLR 419 was initiated under the authority of s36 of the Maori Purposes Act 1951 which conferred jurisdiction to determine questions relating to the bed of the Wanganui River. The Court required further information to deal with the matter comprehensively; the second case stated arose out of that requirement. However, the court in the first case did rule that "… the bed of the Wanganui River within the limits stated, was at the time of the Treaty of Waitangi and upon the acquisition of British Sovereignty, land held by Maoris – namely the Wanganui tribe – under their customs and usage." From that judgement FB Adams J dissented and provided an opinion which said the river was held ad medium filum aquae by individual Maori owners. Adams J in a very detailed judgement disagreed with the vagueness of the tribal case and his opinion is valuable for providing some balance between the rights of individual Maori owners and tribal claims. His decision was encapsulated in the second case when the three judges of the second Court of Appeal agreed with him.

In the context of the rights which do not arise along the riverbanks of Maori land when compared with reservations along rivers in general land, whether the land is tribally owned or individually owned may not matter – the land is of customary origin and is exempt from riverside margins.

sold. After receipt of the certificate of the Court, the Governor could issue a Crown grant for the land in the certificate. Section LXXVI of the Act of 1865 provides for roads through land granted under the Act. "From and out of any land which may be granted under the provisions of this Act it shall be lawful for the Governor at any time thereafter to take and lay off for public purposes one or more lines of road …". Significantly at the point of taking the land would be freehold in status and no longer customary land. The Maori title had been converted to a general title, and the Maori owners could sell the land free of tribal constraints. Large areas were sold to the settlers[24].

The laying out of roads along water boundaries was the device employed by the Governor and early land administrators in respect of general land to secure a public margin. This was achieved under the statutes and ordinances relating to the sale of Crown land, all of which where appropriate contained powers to lay off roads. In fact, under sLXXVI the Governor could have laid out roads along Maori freeholds with frontage to water in the same way as in land sold directly by the Crown to the settlers. Clearly the Crown did not compromise the title of Maori but respected cultural and customary rights in relation to the land for which Maori retained title. Article 2 of the Treaty of Waitangi may be taken to have had a bearing on the matter.

The key period in relation to Maori land and water margins is 1862-1909. If legislation were to deal with any form of marginal strip along water, it is the legislation enacted in that period which would provide authority. From time-to-time between the first Native land Act of 1862, and the year 1909, when for practical purposes the conversion from customary to freehold land was completed there were changes made in the legislation relating to the manner of giving effect to and the steps to be taken after an investigation of title by the Maori Land Court. The law and practice are authoritively summarised by Sir John Salmond, then Solicitor-General, in his *Notes on the History of Native Title 1909* (Vol 6 The Public Acts of New Zealand 1908-1931 at p87) reproduced as Appendix 15 (p109).

All of the statutes to which Sir John refers have been perused; there is no statutory provision which would require or authorise a marginal strip along water boundaries. That is not to say that on occasion, reserves may have been made for public access. Rather, the statutes simply do not provide for margins along water. Cooke J in his judgement in re the Bed of the Wanganui River (1955) NZLR 419 at 437 in commenting on the effect of the legislation summarised by Sir John Salmond (supra) says:

> "At every stage of the legislation, there was, however, provision for the issue of some instrument that either itself was, or that had the effect of, a Crown

[24] Many riparian titles (no riverside or coastal reservation) came into the hands of settlers through direct sales from Maori.

> grant; and it is clear, I think, that, whatever be the precise form of the instrument of grant that represented the culmination of the proceedings for investigation of title to any of the riparian lands between 1862 and 1903, the grantor, and the only grantor, in the transactions was the Crown. The instrument was always, in effect or in terms, a grant by the Crown: and it is to such a grant and to the circumstances surrounding it that resort must be had …"

In the event of there being a doubt in the final analysis, it is the grant and the supporting survey plan which will determine the issue.

Many years were to pass before the Crown would attempt to establish public ownership of water margins on lands for which it had granted title, but had not made appropriate provision at the time of the Crown grant. The Land Subdivision in Counties Act 1946 was the first of a line of statutes which provided for a compulsory reserve for public purposes along water boundaries when land was subdivided by the owner. Section 11 – Reserves along seashore and banks of lakes and rivers etc – included a proviso to subsection (1) –

> "Provided also that nothing in this subsection shall apply with respect to the subdivision of any land which is **[**Maori**]** land within the meaning of **[**the Maori Affairs Act 1953**]**."

Traditional values were preserved in the legislation.

This approach was to change. Section 432 of the Maori Affairs Act 1953 required partitions (subdivisions) of Maori Land in cities and boroughs to comply with the provisions of the Municipal Corporations Act as to subdivision. Under s432 the vesting of a reserve was effected by an order of the Maori Land Court. Section 23 of the Maori Affairs Amendment Act 1967 inserted a new s432A in the Principal Act, to place land in counties in the same situation as land in cities and boroughs. Esplanade reserves could be required by councils and confirmed by order of the Maori Land Court.

When the Local Government Act 1974 replaced the Municipal Corporation Act and the Counties Amendment Act (in 1979), the same procedure was followed. When Te Ture Whenua Maori Maori Land Act was enacted in 1993, there was a substantial upgrade of procedures. The main provisions relating to Maori partitions are set out in "Environmental Law & Resource Management" 2n Ed 1997 DAR Williams at p139. [25]Section 303(2) of Te

[25] The main differences between an ordinary subdivision and a partition to which the RMA applies are:

1. Any condition requiring a contribution of land for reserves or in lieu of reserves can only bet set aside out of part of the land to be alienated;[1]
2. A reserve contribution cannot be made in respect of any part of the land which the Maori Land Court has certified to be of special historical significance or emotional association to the Maori people;[2]

Ture Whenua as originally enacted was specific in relation to the vesting of esplanade reserves. Sub paragraph (b) says:

> Make such orders as may be necessary to
>
> (i) Vest in the territorial authority an esplanade reserve required to be set aside under section 230 of the Resource Management Act 1991; and
>
> (ii) Vest in the Crown any land to which section 235 of the Resource management Act 1991 applies - and sections 229 to 237 of the Resource Management Act 1991 shall apply with all necessary modifications.

However, by s47 of Te Ture Whenua Maori Amendment Act 2002[26], this provision was repealed and new procedures substituted. Land no longer vests in the territorial authority as esplanade reserve along water, but is set apart as a Maori reservation for the common use and benefit of the people of New Zealand. This new concept is both encouraging and sensitive.

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3. No survey plan relating to the partition need to be deposited with the District and Registrar, but a plan must still be approved by the Maori Land Court;[3]

4. Any outstanding subdivision consent conditions may still have to be complied with at the time of making the partition order;[4]

5. The Maori Land Court has special powers to deal with subsequent alienation of land outside the hapu where there has previously been an exempt partition of the land;[5] and

6. Any requirement for reserves or roading may be waived if the territorial authority is satisfied that the partition is not for the purposes of sale and no person other than the present owner will acquire an interest in the land.[6]

[1]Section 302(1), Te Ture Whenua Maori Act 1993, Maori Land Act 1993

[2]Section 302(2). Te Ture Whenua Maori Act 1993, Maori Land Act 1993

[3]Section 300, Te Ture Whenua Maori Act 1993, Maori Land Act 1993

[4]Section 303(2) and (3), Te Ture Whenua Maori Act 1993, Maori Land Act 1993

[5]Section 304, Te Ture Whenua Maori Act 1993, Maori Land Act 1993

[6]Section 305, Te Ture Whenua Maori Act 1993, Maori Land Act 1993; the Court may impose a condition that, in the event of sale, the territorial authority's reserves and roading requirements be met in full.

[26] S47 Te Ture Whenua Maori Maori Land Act 2003 states in subsections (2) (3) (4) and (5) the following:

> "(2) The Court must –
>
> "(a) make such orders as it considers necessary, having regard to Part X of the Resource Management Act 1991, to ensure that, in respect of any conditions of the subdivision consent that have not been complied with, adequate provision is made for such compliance; and
>
> "(b) have regard to sections 229 to 237H of the Resource Management Act 1991 in respect of every partition of land to which section 301 applies.
>
> "(3) Any land that would be required to be set apart, reserved, or vested in another person, because of subsection (2), must be set apart as a Maori reservation for the common use and benefit of the people of New Zealand, despite anything in the Resource Management Act 1991.
>
> "(4) Land to which subsection (3) applies must be treated –
>
> "(a) as if it were land set apart under section 338(1) and section 340(1); and
>
> "(b) as if the procedural requirements of those subsections has been satisfied.
>
> "(5) The Court may declare that any land set apart under subsection (3) be dedicated for the construction of roads, if the Court considers that to be necessary to satisfy a condition or requirement of a subdivision consent."

The Queen's Chain at a Glance

The Status of Publicly Owned Margins Along Water Boundaries

Margins Vested on Crown Alienation

Class	Alienation Period	Title to Margin	Public Rights
1. Roads Roads laid out on the record maps of the Survey Office by or under the authority of Her Majesty's Letters Patent or Royal Instruments, or of 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. Up until 1972 roads were shown coloured burnt sienna on the survey record maps. After 1972 roads were individually and appropriately labelled on the survey plans.[2]	1840 – 1892	[1]**Original Title:** Crown 1840 – 1892	Full Rights as on Public Highways The common law rights over roads are sent out in "Shorts Roads and Bridges" to include: "(a) … the rights of the public to use a public highway by day or night for any reasonable or legitimate purpose, without let or hindrance. (b) … the right of persons or the public to an injunction against anyone who interferes with such privilege. (c) … the power which private persons and others have, in certain cases, to abate nuisances on roads; and (d) … the liability in some cases for negligence in respect to things done, or omitted to be done, on roads or streets, which cause special damage to any person." These principles must be read subject to statute law and council by laws so that today by far the greater part of the law on public roads is to be gathered from statutory sources. But the common law continues to give guidance to basic rights on unformed roads.
	1892 – 1914 In this period there was a mix of roads and Crown owned marginal strips both of which were in Crown ownership.	**Original Title:** Crown 1892 – 1914	Roads subject to full rights as on Public Highways. Access rights by implied consent on Crown owned marginal strips.
	1914 - 1972	**Original Title:** Crown 1914 – 1972	Full Rights as on Public Highways
	1972 – present time	[3]**Current Title:** The Territorial Authority or Transit New Zealand for roads (if a government or state highway along water – s44 Transit New Zealand Act 1989). In 1972 by s191A(1) of the Counties Act 1956 as inserted by s2 of the Counties Amendment Act 1972 roads (to include waterside roads) vested in the then County Councils.	Full Rights as on Public Highways

[2] *Roads along water boundaries were the first form of marginal reservation along water frontages being used extensively up until 1892 and in some instances thereafter. Section 110 of the Land Act 1892 provided for the reservation of Crown land rather than roads along water boundaries. The authorities to subdivide and sell Crown land and to lay off roads generally and also along water over the period 1840-1892 are listed at the end of this table on pages 43 – 46.*

[1] Ownership at the time of reservation or vesting.

[2] *ibid*.

[3] Ownership by the Territorial Authority means City Council or District Council named in part 2 of schedule 2 Local Government ct 2002. District Councils replace earlier borough and county councils.

Class	AlienationPeriod	Title to Margin	Public Rights
2. Road Reserves Land granted reserved, or set apart by or under the authority of Her Majesty's Letters Patent or Royal Instruments, or of 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.4	1840 – 1854	**Original Title**: Crown 1840 – 1854	Access rights by implied permission on Crown land.
	1854 – 1876 Provincial Government	Reservations in this period were generally completed by a grant of title to the Superintendent of the province. On abolition of the provinces in 1876 title revested in the Crown but later most reserves were granted to Councils etc though some reserves were retained by the Crown. Individual identification required.	Access rights by implied permission on provincial or Crown land.
The Land Acts of 1877, 1885, 1892, 1908, 1924 and 1948 all contain provisions enabling reserves to be set aside out of Crown land. From 1877 to 1924 there were specific powers in the Land Acts to set aside Crown land as reserves for road. Section 167 of the Land Act 1948 (now in force) originally included general powers to set aside Crown land as reserves and these powers would have included road. Section 167 was amended in 1994 to provide the widest power possible to vest reserves and would continue to provide for road reserved along water boundaries.	1877 – present time	**Original Title:** Crown or County Council **Current Title:** For all Road Reserves in Former Counties; Territorial Local Authority. In 1972 by s6 Counties Amendment Act 1972 all road reserves then vested in the Crown vested in the then County Council.	Access rights by implied permission on Council land.

[4] Refer to list of legislation on pp 43-46

Class	Alienation Period	Title to Margin	Public Rights
3. Marginal Strips Reserved from sale under: Land Act 1892; s110 Land Act 1908; s122 Land Act 1924; s129 Land Act 1948; s58 Conservation Act 1987; s24 Conservation Act 1987 as amended by Conservation Law Reform Act 1990; new part IVA	1892 – present time	**Original Title:** Crown **Current Title:** Crown	Up until 1987 a full right of access by implied permission over Crown land until the enactment of s24 Conservation Act 1987 making access subordinate to conservation values. (Note: These strips are not reserves subject to the Reserves Act 1977 which does not apply – the land is reserved from sale as Crown land and is not a formal "reserve"). The Conservation Law Reform Act 1990 repealed s58 of Land Act 1948 and s24 Conservation Act 1987. Section 24C of the Conservation Act which states the current law says: **Purposes of marginal strips** – Subject to this Act and any other Act, all marginal strips shall be held under this Act – (a) For conservation purposes, in particular – (i) The maintenance of adjacent watercourses or bodies of water; and (ii) The maintenance of water quality; 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. Section 24(3) Conservation Act 1987 makes the Conservation Act apply to all marginal strips: (3) Every strip of land of any width that immediately before the commencement of this section, was reserved from sale or other disposition on any Crown land by or under this Act or any other Act, whether or not the strip was reserved for any specified purpose, shall be deemed to be reserved to the Crown as marginal strip of the same width.

Class	Alienation Period	Title to Margin	Public Rights
4. Ambulatory Marginal Strips When s58 of the Land Act 1948 was repealed by The Conservation Law Reform Act 1990 (s37 and Schedule to the Act) a new concept was introduced. Marginal strips along water were to move as the water moved. Section 24G says: "Effect of change to boundary of marginal strips – (1) (Where, for any reason, the shape of any foreshore or of the margin of any lake or reservoir or of any bay or inlet of any lake or reservoir is altered and the alteration affects an existing marginal strip, a new marginal strip shall be deemed to have been reserved simultaneously with each and every such alteration. (2) Where, for any reason, the course of any river or stream is altered and the alteration affects an existing marginal strip, a new marginal strip shall be deemed to have been reserved simultaneously with each and every such alteration."	1990 – present time	Land remains included in the title of the owner (s24D(6)); deemed reservation of the strip is in favour of the Crown (s24(1)).	Section 24 (C) and s24(3) of the Conservation Act 1987 as set out immediately above also apply to ambulatory marginal strips. Section 24H provides for the appointment of managers of marginal strips. By subsection 4 the manager of a marginal strip shall – (a) Manage the strip in a way that best serves the purposes specified in section 24C of this Act; and (b) Enable members of the public to have access along the strip.

Class	Alienation Period	Title to Margin	Public Rights
5. Public Reserves Given the multiplicity of statutes applying to public reserves it is difficult to state other than general principles. In a broad sense public reserves include land granted, reserved, or set apart for public purposes by or under the authority of Her Majesty's Letter Patent or Royal Instructions, or of 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[5] Association or its agents. The range of public purposes was codified in 1881 and 1908 and the second schedule to the Public Reserves and Domains Act 1908 remains at the heart of the definition of what is a public reserve. The Reserves Act 1977 which is the legislation now in force draws on that definition through the chain of reserves statutes dating back to 1908. The second schedule is reproduced as Appendix 16 (p118) Section (2) of the Reserves Act 1977 should be referred to for a full definition of "Reserve".	1840 – present time	**Original Title:** Crown; or Local Authority; or Trustees **Current Title:** Crown; or Local Authority; or Trustees	The rights of the public to enter on a reserve would have to be assessed in relation to the legal purpose for holding the reserve. Refer Appendix 16 (p118). Clearly some reserves would be exclusive of public access. Some reserves if abutting water could provide access. Section 3 of the Reserves Act 1977 says: **General purpose of this Act** – (1) It is hereby declared that, subject to the control of the Minister, this Act shall be administered in the Department of **[**Conservation**]** for the purpose of – (a) Providing for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing – (i) Recreational use or potential, whether active or passive; or (ii) Wildlife; or (iii) Indigenous flora or fauna; o (iv) Environmental and landscape amenity or interest; or (v) Natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features or value. (b) … (c) **Ensuring, as far as possible, the preservation of access for the public to and along the sea coast, its bays and inlets and offshore islands, lakeshores, and riverbanks**, and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development. (Emphasis added)

[5] Refer list of legislation on pp 43-46

Margins Regained on Subdivision

Class	Subdivision Period	Title to Margin	Public Rights
Public reserves along water taken on the subdivision of private rural land as a town under		**Original Title:** Crown **Current Title**: Crown or Territorial Authority	Implied permission of Crown or (now) The Territorial Local Authority
(i) s3 Land Laws Amendment Act 1912; and	7.11.1912-6.11.1924		
(ii) s17 Land laws Amendment Act 1920; and	11.11.1920-6.11.1924		
(iii) s16 land Act 1924; Note this early **legislation did not require** reserves to be taken along water. Appropriate reserves could however be shown on private plans of subdivision to be subject to the Reserves and Domains Act 1908.	6.11.1924-1.1.1947		
Public Purpose Reserve under s11 Land Subdivision in Counties Act 1946 subject (now) to Reserves Act 1977 which in s23(2) acknowledges Esplanade status.[6]	1.1.1947 – 1.4.1962	**Original Title:** Crown **Current Title:** Territorial Authority. In 1961 by s44 Counties Amendment Act 1961 title vested in the then county council.	Clarified by s7 Reserves Amendment Act 1979 inserting a proviso to s23(2)(a) of the Reserves Act 1977. Public may pass and repass on foot unless the administering body determines that access should be prohibited or restricted to preserve the stability of the land or the biological values of the reserve.
Public reserves along water taken on the subdivision of private land in a city or borough.		**Original Title:** City or Borough Council **Current Title:** Territorial Authority	Implied permission (now) Territorial Local Authority for reserves taken under Municipal Corporations Acts of 1920 and 1924. Reserves taken by Municipal Corporations Act 1954 are classified by s7 Reserves Amendment Act 1979 inserting a proviso to s23(2)(a) of the Reserves Act 1977. Public may pass and repass on foot unless the administering body determines that access should be prohibited or restricted to preserve the stability of the land or the biological values of the reserve.
(i) Section 335 Municipal Corporations Act 1920;	1.4.1921–1.4.1934		
(ii) Section 332 Municipal Corporations Act 1933;	1.4.1934-1.4.1955		
(iii) Sections 350-353 Municipal Corporations Act 1954. This **legislation did not require reserves** to be taken along water. Appropriate reserves could however be shown on private plans of subdivision to be subject in turn to the Reserves and Domains Act 1908, The Public Reserves Domains and National Parks Act 1925, and The Reserves and Domains Act 1953. Now subject to Reserves Act 1977 which in s23(2) acknowledges Esplanade status.	1.4.1955-1.4.1979		
Public Purpose Reserve under s29 Counties Amendment Act 1961 subject (now) to Reserves Act 1977 which in s23(2) acknowledges Esplanade status.[7]	1.4.1962 – 23.12.1977	**Original Title:** County Council **Current Title:** Territorial Authority	Clarified by s7 Reserves Amendment Act 1979 inserting a proviso to s23(2)(a) of the Reserves Act 1977. Public may pass and repass on foot unless the administering body determines that access should be prohibited or restricted to preserve the stability of the land or the biological values of the reserve.

[6-7] Reserves along water **required to be taken** under the provisions of the statute named.

Class	Subdivision Period	Title to Margin	Public Rights
Recreation Reserve under s29 Counties Amendment Act 1961 as amended by s4 Counties Amendment Act 1977 subject to (now) Reserves Act 1977.[8]	23.12.1977 – 1.4.1979	**Original Title:** County Council **Current Title:** Territorial Authority	General right of recreation (Note: as a recreation reserve it is not subject to s7 Reserves Amendment Act 1979 which states a right to pass and repass on foot). Refer to s17 Reserves Act 1977.
Local Purpose Reserve under s289 Local Government Act 1974 "for the purpose of providing access and to protect the environment" as inserted by Local Government Amendment Act 1978 subject to Reserves Act 1977 which in s23(2) acknowledges Esplanade status.[9]	1.4.1979 – 1.10.1991	**Original Title:** Territorial Authority **Current Title:** Territorial Authority	Clarified by s7 Reserves Amendment Act 1979 inserting a proviso to s23(2)(a) of the Reserves Act 1977. Public may pass and repass on foot unless the administering body determines that access should be prohibited or restricted to preserve the stability of the land or the biological values of the reserve.
Local Purpose Reserve for Esplanade Purposes under s230 Resource Management Act 1991 subject to Reserves Act 1977.[10]	1.10.91 – 7.10.93	**Original Title:** Territorial Authority **Current Title:** Territorial Authority	As set out in original s229 Resource Management Act 1991. Now redundant – see commentary on s231 below.
Local Purpose Reserve for Esplanade Purposes under s231 Resource Management Act 1991 as inserted by s124 Resource Management Act 1993 subject to Reserves Act 1977.[11]	7.10.93 – present time	**Original Title:** Territorial Authority **Current Title:** Territorial Authority Note: Under s237D Resource Management Act 1991 an Esplanade Reserve may be trans-ferred from the Territorial Authority and vested in Crown or Regional Council.	By amendment in 1993 (s124 Resource Management Act Amendment) An esplanade reserve or an esplanade strip has one or more of the following purposes: (a) To contribute to the protection of conservation values by, in particular, - (i) Maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; 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 recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values. Note: The sub-paragraphs (a) (b) and (c) are disjunctive meaning that an esplanade reserve or strip may be created for all or any one of these purposes. There may be no public access.
Esplanade Strip under s232 Resource Management Act 1991 as inserted by s124 Resource Management Amendment Act 1993[12]	7.10.93 to present time	Land remains vested in Owner. Instrument creating the strip is in favour of Territorial Authority	Do

[8-12] Reserves along water **required to be taken** under the provisions of the statute named.

Class	Subdivision Period	Title to Margin	Public Rights
Public (Esplanade) reserves along water taken on partition of Maori land in a city, borough or county.			
(i) Section 432 Maori Affairs Act 1953 – deems partition to be subdivision for purposes Municipal Corporations Act 1933 and later the Act of 1954.[13]	1.4.1954-1.4.1979	**Original Title:** City or Borough Council **Current Title:** Territorial Authority	Clarified by s7 Reserves Amendment Act 1979 inserting a proviso to s23(2)(a) of the Reserves Act 1977. Public may pass and repass on foot unless the administering body determines that access should be prohibited or restricted to preserve the stability of the land or the biological values of the reserve.
(ii) Section 432A Maori Affairs Act 1953 (inserted by s23(1) Maori Affairs Amendment 1967) deems partition to be a subdivision for purposes of Counties Amendment Act 1961.[14]	1.4.1968-1.4.1979	**Original Title:** County Council **Current Title:** Territorial Authority	"
(iii) The original s432 and also s432A were repealed by s3(4) and the second schedule to the Local Government Amendment Act 1978 which enacted a new s432 to apply to cities, boroughs and counties.[15]	1.4.1979-1.10.1991	**Original Title:** City, Borough or County Council **Current Title:** Territorial Authority	"
(iv) Section 432 was in turn repealed by and later from 1989 to city and district councils s362 and the 8th schedule to the Resource Management Act 1991 and a new s432 substituted to apply to partitions in all Territorial Authority districts.[16, 18]	1.10.1991-1.7.1993	**Original Title:** Territorial Authority **Current Title:** Territorial Authority	"
(v) Section 303 of Te Ture Whenua Maori Maori Land Act 1993 replaced s432 (as inserted by The Resource Management Act 1991) to apply to all partitions in all Territorial Authority districts.[17, 19] Section 303 vested esplanade strips in the Territorial Authority in the conventional way. This was soon to change in 2002 with Maori retaining title but dedicating a reservation to public usage.	1.7.1993-1.7.2002	**Original Title:** Territorial Authority **Current Title:** Territorial Authority	"

[13-17] Reserves along water **required to be taken** under the provisions of the statute named. Reserves vest subject to (now) Reserves Act 1977

[18,19] Applies only when partition is to be held by owners who are not members of the same hapu, otherwise exempt.

Class	Subdivision Period	Title to Margin	Public Rights
Maori Reservation for the common use and benefit of the people of New Zealand: s303 Te Ture Whenua Maori Maori Land Act 1993 as inserted by s47 Te Ture Whenua Maori Amendment 2002.[20]	1.7.2002 to present time	A reservation under s338 and 340 Te Ture Whenua Maori Maori Land Act 1993	General right of access.

[20] Applies only when partition is to be held by owners who are not members of the same hapu, otherwise exempt.

List of Legislation Applying to the Alienation of Crown Land 1840-1892

Legislation by The Imperial Government, Governor's Ordinances, and the General Assembly of New Zealand, 1840-76

New Zealand Act, 1840 (Imperial)
Royal Charter and Instructions of 1840 (Imperial)
New South Wales New Zealand Land Act 1840
New Zealand Land Claims Ordinance 1841
New Zealand Land Claims Ordinance 1842 (disallowed)
Land Claims Ordinance, 1844
Crown Titles Ordinances
Governor's Proclamation of 1842
Crown's Waiver of Right of Pre-emption
New Zealand Government Act, 1846 (Imperial)
Royal Charter and Instructions of 1846 (Imperial)
Additional Instructions of 1847, 1848, and 1849 (Imperial)
Governor's Proclamation of 1848
New Zealand Company's Colonisation Act, 1847
Crown Lands Ordinance (New Ulster), 1849
Crown Lands Amendment and Extension Ordinance 1851
Constitution Act, 1852 (Imperial)
General Land Regulations issued by the Governor, 1853
Waste Lands Act, 1854
Provincial Waste Lands Act, 1854
Waste Lands Act, 1858
Crown Lands Act, 1862
New Zealand Settlements Act, 1863, and amendments
Commissioners of Crown Lands Act, 1869, and Amendment Act, 1873
Waste Lands Administration Act, 1876

Legislation by the Provinces 1854-1876

Province of Auckland

The province was constituted by Proclamation dated the 20th February, 1853, made under the powers conferred by the Constitution Act, 1852.

Land Regulations 1855
Naval and Military Scrip Act 1856
Land Regulations 1856
Land Regulations 1859
Auckland Wast Lands Act 1858
Auckland Waste Lands Amendment Act 1862
Auckland Waste Lands Act 1867
Auckland Waste Lands Act 1874
Auckland Waste Lands Amendment Act 1875
Part II of the Waste Lands Act (NZ) 1876

Province of Hawke's Bay

An Order in Council dated the 1st November, 1858, established the above province and defined its boundaries.

The General Land Regulations 1853
Hawke's Bay Naval and Military Settlers Act 1861
Hawke's Bay Naval and Military Settlers Act 1863
The Hawke's Bay Waste Land Amendment Act 1865
Land Regulations Extension (Hawke's Bay) Act 1866
The Hawke's Bay Land Regulations Extension Act Amendment Act 1868
Hawke's Bay Crown Lands Sale Act 1870
The Hawke's Bay Special Settlements Act 1872
The Hawke's Bay Waste Lands Regulations Amendment Act 1874
Part IV of the Waste Lands Act (NZ) 1876

Province of Taranaki

Established by Proclamation dated 28th February, 1853, under the Constitution Act, 1852, under the name of the "Province of New Plymouth." Name changed to "Taranaki" by the Province of Taranaki Act, 1858.

Regulations for the Sale and Disposal of Waste Lands of the Crown 1855
The Taranaki Naval and Military Settlers Act 1865
The Taranaki Naval and Military Settlers Act 1867
The Land Orders and Scrip Act (Taranaki) 1866
The Taranaki Waste Lands Act 1874
The Taranaki Waste Lands Amendment Act 1875
The Taranaki Iron-smelting Waste Lands Act 1874
Part II of the Waste Lands Act (NZ) 1876

Province of Wellington

Established by Proclamation dated 28th February, 1853, under the Constitution Act, 1852.

The General Land Regulations 1853 as amended by the additional Land Regulations 1855
Wellington and Hawke's Bay Naval and Military Settlers Act 1863
Wellington Waste Lands Amendment Act 1865
Wellington Waste Lands Act 1870
Wellington Waste Lands Regulations Amendment Act 1871
Wellington Special Settlements Act 1871
Wellington Special Settlements Act 1874
The Douglas Special Settlement Act 1876
Part V of the Waste Lands Administration Act (NZ) 1876

Province of Marlborough

This was established by an Order in Council dated 1st November, 1859.

Nelson Waste Lands Regulations 1856
Marlborough Waste Lands Regulations Amendment Act 1863
Marlborough Waste Lands Act 1867
Marlborough Waste Lands Act Amendment Act 1874
Part VII Waste Lands Administration Act (NZ) 1876

Province of Nelson

Established by a Proclamation dated 28th February, 1853, under the Constitution Act, 1852.

Regulations for the Sale and Disposal of Waste lands 1856
Nelson Waste Lands Act 1858
Nelson Waste Lands Regulations Amendment Act 1861
Nelson Waste Lands Act 1863
Crown Lands (Nelson) Leasing Act 1865
Crown Lands (Nelson) Leasing Act 1867
Crown Lands (Nelson) Leasing Act 1869
Nelson Crown Lands Leasing Amendment Acts 1871 and 1872
Nelson Special Settlements Act 1872
Nelson Waste Lands Act Amendment Act 1872
Nelson Waste Lands Act 1874
Part VI Waste Lands Administration Act (NZ) 1876

Province of Westland

By virtue of the Province of Westland Act, 1873, this province was constituted as from the 29th September of that year.

Westland Waste Lands Act 1870
Westland Waste Lands Amendment Acts 1873 and 1874
Part XI Waste Lands Administration Act (NZ) 1876

Province of Canterbury

Established by Proclamation dated 28th February, 1853, under the Constitution Act, 1852.

An Act of the Imperial Parliament relating to the disposal of land in the Canterbury Settlement (13 & 14 Vict., c. 70). Dated 14th August 1850, empowered the Canterbury Association, for a term of ten years or longer, to dispose of land formerly in the possession of the New Zealand Company, estimated to contain 2,500,000 acres, excepting some special areas.

The Canterbury Association issued amended terms of purchase on the 3rd July 1850.

Land Regulations 1856
Waste Lands Regulations Amendment Ordinance 1856
Waste Lands Amendment Ordinance 1858
Waste Lands Act 1858
Canterbury Waste Lands Act 1864
Canterbury Waste Lands Acts 1865 and 1866
Canterbury Waste Lands Act 1867
Canterbury Waste Lands Act 1869
Canterbury Waste lands Act 1873
Part VIII Waste Lands Administration Act (NZ) 1876

Province of Otago

Established by a Proclamation dated 28th February, 1853, under the Constitution Act, 1852.

A Proclamation issued by the Governor on the 12th February, 1856, contained Land Regulations for the Province of Otago, which then included Southland.

Land Sales and Leases Ordinance 1856

Town Land Sales and Leases Ordinance 1857
Order in Council 19.9.1860
Otago Waste Lands Act (No 1) 1863
Otago Waste Lands Act (No 2) 1863
Otago Waste Lands Act 1866
Otago Waste Lands Amendment Act 1869
Otago Hundreds Regulations Act 1869
Otago Settlements Act 1869
Otago Waste Lands Act 1872
Otago Waste Lands Amendment Acts 1874 and 1875
Part IX Waste Lands Administration Act (NZ) 1876

Province of Southland

An Order in Council was issued on the 1st April, 1861, establishing the Province of Southland and defining its boundaries; whilst the Stewart Island Annexation Act, 1863, annexed Stewart Island to the Southland Province. The Otago and Southland Union Act, 1870, united the provinces of Otago and Southland. Whilst Southland was a separate province the following Acts were passed affecting the waste lands of the province.

The Southland Waste Lands Act 1863 partially repealed the Otago Order in Council of 19.9.1860 and Otago Land Regulations 1856
The Southland Waste Lands Act 1865
The Southland Waste Lands Amendment Act 1867
The Otago and Southland Union Act 1870
Southland Waste Lands Act 1872
Southland Waste Lands Amendment Act 1875
Part X Waste Lands Administration Act (NZ) 1876

Legislation by the General Assembly, 1877-1892

Land Act, 1877
Land Act Amendment Act, 1879
Land Act Amendment Act, 1882
Land Act Amendment Act, 1884
Agricultural leases
Land Act, 1885
Land Act Amendment Act, 1887
Land Act Amendment Act, 1888
Selectors' Land Revaluation Act, 1889
Land Act 1892

Conclusion

The margins which collectively form the Queen's Chain are a mixed lot comprising eight broad categories. Roads (1840-1892) Marginal Strips (1892 to present time), Ambulatory Marginal Strips (1990 to present time), Public Reserves (including road reserves) along water (1840 to present time) make up the marginal strips which were retained by the Crown when land was alienated. Esplanade and Public Reserves (of various types) date from 1912 to the present time; Recreation Reserves (1977-79), Esplanade Strips (1991 to present time) and Maori Reservations (2002 to present time) together make up the waterside land which is taken as public land when land with a water boundary is subdivided.

Roads (including road reserves) laid off in the period up until 1892 when the bulk of the land was sold to the settlers, together with marginal strips reserved under the Land and Conservation Acts after 1892, make up the backbone of the Queen's Chain. The next major category is Esplanade Reserves and this class, acquired as land is subdivided, continues to expand.

During the time of provincial government 1854-1876, there were extensive sales of the most accessible Crown land. As the laying off of reservations along water was not statutorily based either in the legislation of central government nor in the ordinances and legislation applying in specific provinces, it is not surprising that practices varied in the provinces. Nevertheless, the practice of providing roads along water boundaries was extensively applied. The problem is that it was inconsistently applied both within individual provinces and generally across the provinces. As a result, we now have a national problem given the vast areas of land which were taken up by the settlers in provincial times. It was not until the abolition of provincial government in 1876, when all powers of provincial governments returned to the Crown, that a consolidated approach was developed to in the first instance to provide roads along rivers and later extended to include roads along the coast and lakes. Section 110 of the Land Act 1892 was to set the scene for the next 56 years.

The ideal – which draws its origin (inter alia) in the action of the Queen in requiring coastal reservations in 1843 – that access to the sea, rivers and lakes should be for the benefit all of the people of New Zealand has been realised physically in an incomplete way and legally in an unnecessarily complex way.

This paper is not concerned with the physical inadequacies in the Queen's Chain, vitally important though such matters are. Rather, this paper is designed to illustrate the legal complexities which once clearly established, may be further clarified. In a legal sense, roads along water give the public rights which are superior to any other form of waterside reservation. All of the other reservations are less precise from the perspective of public access. Some of the recent statutory innovations have results which surely were unintended. The

Conservation Act 1987 (s24) replaced the prime right of access over all marginal strips, including those reserved over a period of 100 years under the Land Acts with new conservation values. The Conservation Law Reform Act 1990 modified this stance, and provided for six conservation purposes, one of which was public access. These six purposes (summarised at p36) are stated conjunctively so that all six apply concurrently. Turning to the Resource Management Act which in 1993 was amended to provide more flexible means of regaining waterside margins on private land, we find that six conservation values are to apply to esplanade reserves (p40). These values include public access and generally, though not precisely, equate with the Conservation Act values, but are stated disjunctively so that an esplanade reserve may be created for all, several or one of the values i.e. there need be no public access. The provisions of the two Acts are out of step.

The Queen's Chain has been demonstrated to be an ideal, rather than a legal entity. It is probably better kept as an ideal because its symbolism is the source of its strength. No agency of central government or local government should be permitted to capture the ideal for other purposes. Clearly, conservation values have a place and must be respected. Roads may be left alone, for no clarification is required. However, all of the other components of the Queen's Chain may be clarified to make free and perpetual public access the prime purpose for the existence of public title for the land. The reserves exist for the benefit of all of the people of New Zealand. In the end much time, money and effort may be wasted if that elementary truth be forgotten.

The law is stated as at 1 August 2003.

Appendix 1

No Queen's Chain – Article by Huhana Smith (Mana te marae atea February/March 2002)

Huhana Smith (Ngati Tukorehe, Ngati Raukawa) is an artist and academic who works for Te Papa Tongarewa and who is on an environmental team for Ngati Tukorehe and Patumakuku incorporated, Levin.

Kuku Beach stretches between the Ohau and Waikawa Rivers, south of Levin and north of Otaki.

My relations, the people of Te Rangitawhai and Matiawa, hapu of Ngati Tukorehe, have always regarded the beach and river environs in the region as part of their land – theirs to look after and safeguard.

The korero among our old people has always been that Kuku Beach is an ancestral beach and we have a particular tikanga and a kawa about looking after it.

This meant we never ever cooked on the beach. We always took our kai moana home or took it up to the dry sand. No catch was ever cooked down close to the water.

There were things that we did and didn't do. There were value systems that went with the fishing. You lived by those rules and you never changed them.

Our old people also stressed the value of kaitiakitanga.

But that guardianship role became much harder over the years, as more and more people assumed that the beach was public property – theirs to treat as they wished.

At Kuku, we've seen how this treatment is damaging the coastal environment, destroying the middens and shellfish beds, and disturbing the nesting grounds of birds.

We've seen people burning their rubbish on the beach, zooming around in their four-weel drives and racing their bikes down the beach, even cooking their fish and shellfish on the beach.

And they've claimed the right to do this because of what's known as the Queen's chain – a 20-metre strip of land around New Zealand's coastline that, among other things, allows everyone free access to the waterways.

The idea behind it goes back to December 1840, when Queen Victoria asked her colonial subjects to set aside reserves of land fit "for the creation and amusement of the inhabitants", or for "any other purpose of public convenience, utility, health or enjoyment".

That directive led to the creation of the Queen's chain, but what began with the egalitarian notions of access for all, has ended up being widely perceived, by local and central government as well as the public, as a universal right to all the country's waterways.

And as we've always known at Kuku, this isn't always the case.

Only about 70 percent of the country's major waterways is governed by the Queen's chain.

In 1892, legislation was enacted requiring the reservation of land next to water, but this applied only to Crown land.

It never included Maori land.

It wasn't until I started researching the Queen's chain, especially the work of Richard Boast in the Waitangi Tribunal Rangahaua Whanui Series, November 1996, that I found that the Queen's chain is based on a tenuous legal assumption.

At no stage in New Zealand law has it been established that the public has full rights of access to, or use of all rivers, lakes and beaches.

The only way the Crown can claim the foreshore next to Maori land is for Maori to sell it and for the Crown to purchase it.

This fact isn't widely known, and it's a continual source of frustration for Maori landowners, some of whom have been fighting for years against the assumption that the public owns all the foreshores.

The experience of my relations at Kuku Beach shows how easy it is for these assumptions to take hold.

One aunty recalls that there was once a strong relationship between Pakeha farming families in the region and local Maori. They fished alongside each other, and Maori ownership was recognised and respected.

But many of those people have passed on and now a new community lives at Kuku.

Only a few know the history of the region and recognise that our people never relinquished the right to the beach and river environs.

Others aren't always happy about being told that the beach is an ancestral beach with riparian rights, and that the Queen's chain doesn't exist there.

So we've taken steps to finally put public assumptions to rest and reassert the kaitiakitanga of the beach, river beach and dune wetland environment.

Last year we put up a sign in Maori and English.

We pointed out that the coastal region remained culturally significant to the people of Te Rangi Tawhia, Te Matiawa and Tukorehe. That the beach is treasured as waahi tapu and its borders and ancestral lands with riparian rights deserve to be respected.

We set up a car park in the dunes next to the Ohau River beach and we asked people to walk and leave their vehicles in the car park.

We asked them to take any shellfish or fish caught home to cook – in keeping with the kawa of the beach.

And not to light any fires, or dump any household garden or inorganic refuse.

We told them that a coastal ecological restoration project was in process, and to please keep off the areas being replanted, the dune systems and nesting grounds.

And finally, we emphasised that everyone was welcome to enjoy the environment as Kuku Beach is for everyone to enjoy – future generations too.

We have no wish to close the beach off and tell people they can't come on. But we can say: "This is under our control, and this is what you can and can't do." And ultimately every one benefits.

Appendix 2

Colonisation on New Zealand: Extract from Queens' Instructions of 5 December 1840

37. And whereas by the said recited charter, we have given and granted to the governor of our said colony of New Zealand for the time being, full power and authority, with the advice and consent of the Executive Council of our said colony (but subject nevertheless to such provisions as should be in that respect contained in any instructions which might from time to time be addressed to him in that behalf), by any proclamation or proclamations, to divide our said colony into districts, counties, hundreds, towns, townships, and parishes, and to appoint the limits thereof respectively, and to make and execute in our name, and on our behalf, under the public seal of our said colony, grants of waste land to us belonging within the same, to private persons for their own use and benefit, or to any persons, bodies, politic or corporate, in trust for the public. uses of our subjects there resident, or any of them; provided nevertheless, that nothing in the said charter contained shall affect or be construed to affect the rights of any aboriginal natives of the said colony to the actual - occupation or enjoyment in their own persons, or in the persons of their descendants, of any lands in the said colony then actually occupied or enjoyed by such natives. Now we do hereby authorize and require you to cause a survey to be made, in manner hereinafter mentioned, of all the lands within our said colony; and you are for this purpose from time to time to issue instructions to the surveyor-general for the time being of our said colony, and to divide and apportion the whole of the said colony into counties, each of which shall contain, as nearly as may be, 40 miles square, and to apportion each county into hundreds, of which each hundred sha1l, as nearly as may be, comprise an area of one 100 square miles, and again to sub-divide each hundred into parishes, of which each parish shall, as nearly as may be, comprise an area of 25 square miles; and you are to instruct the said surveyor-general that in making the division aforesaid of our said colony into counties, hundreds and parishes, he do have regard to all such natural divisions thereof as may be formed by rivers, streams, highlands, or otherwise; and that whenever in order to obtain a clear and well-defined natural boundary of any county, hundred, or parish, it shall be lawful and necessary to include therein a greater or a smaller quantity of land than is hereinbefore mentioned, he the said surveyor-general do make such deviations from the prescribed, dimensions of such county, hundred, or parish as may be necessary for obtaining such natural boundary, provided that no such county, hundred, or parish, shall in any case exceed or fall short of the dimensions before prescribed to the extent of more than one third part of such dimensions.

38. You are further to require the said surveyor-general from time to time to make to you reports, setting forth the progress which he has made in the before-mentioned survey of our said colony, specifying therein. the limits of each county, hundred, and parish which he has surveyed and apportioned; and you are to require him to annex to such his written reports charts or maps of every such county, hundred, and parish.

39. And it is our pleasure that when any such report of the surveyor-general as aforesaid shall be finally approved by you, with the advice of our said Executive Council, the same shall be deposited among the public records of the said colony, and that an exact transcript thereof shall

be deposited in the office of the surveyor-general of our said colony, and that another transcript thereof shall be transmitted to us through one of our Principal Secretaries of State.

40. And for the better guidance of the said surveyor-general in the execution of the duty so to be committed to him, you will, with the advice of the said Executive Council, issue to him such instructions as may from time to time become necessary.

41. And it is our further will and pleasure, and we do hereby specially authorize and empower you in our name from time to time to issue, under the public seal of our said colony, letters patent for erecting into counties, hundreds, and parishes such districts as may m manner aforesaid be selected for that purpose by the said surveyor-general, in and by any reports so to be; made by him and approved by you; and all such letters patent so to be issued by you in our name shall be enro1led among the public records of the said colony, and shall be of record; and the issuing of any such letters patent shall by you be made known to all our loving subjects within our said colony by proclamations, to be by you from time to time published for that purpose in the most usual and public manner.

42. And we do further authorize and require you, in and by any such letters patent as aforesaid, in our name and on our behalf, to grant to our loving subjects resident within any such county, hundred, or parish all such franchises, immunities, rights, and privileges whatever as, consistently with the circumstances, situation, laws, and usages of our colony of New Zealand, may be properly granted to such our loving subjects in that behalf; provided that such franchises, immunities, rights, and privileges shall, as far as the circumstances of the said colony may admit, be such as are and of right may be claimed, held, enjoyed, and exercised by our subjects inhabiting and residing in any county, hundred, or parish in that part of our United Kingdom of Great Britain and Ireland called England, and not otherwise.

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 sand 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 ad 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.

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 the public service of our said colony of New Zealand shall hereafter be sold and disposed of at one uniform price per acre, which price it is our pleasure shall from time to time be fixed and determined by such instructions as we shall from time to time convey to you through one of our Principal Secretaries of State.

45. And we do further direct that the survey of lands in our said colony shall be carried forward with all practicable expedition, and that the land shall be divided into lots, consisting of not more than one square mile each, which said lots may be further divided into such smaller lots, being equal parts of square miles, as may hereafter be directed by us through one of our Principal Secretaries of State; provided nevertheless, and we do hereby require, that the amount of the expense, to be incurred from year to year in effecting such surveys be included in the estimate of the public expenditure of the said colony, to be annually laid before the legislature thereof, and that such expenses be a charge upon the land revenue of the current year, and be not in any year greater than one-fifth part of the estimated amount of such land revenue, and that such estimate be never exceeded in the actual expenditure for the service aforesaid during the year.

46. And we do direct that charts of all the lands surveyed as aforesaid shall be kept for public inspection in the office of our surveyor-general or deputy surveyor-general for the said colony.

47. And we do further direct that there shall be kept at the office of our said surveyor- general registers of all lands hereafter to be appropriated in the said colony, and that registers shall also be prepared at the same office, as far as may be practicable, of all lands which may have been appropriated within the said colony.

48. And it is our pleasure that such charts and registers shall be kept in such form and manner as to exhibit to all persons applying for the same full and authentic information of all appropriations of land, and all surveyed lands not appropriated.

49. And we do direct, that any person within our said colony of New Zealand, who shall pay to the treasurer or deputy-treasurer of our said colony any sum or sums of money for the purchase of lands situated in the said colony, shall be entitled to receive from such treasurer or deputy-treasurer a certificate of such payment; and on production of such certificate at the office of the surveyor-general in the said colony, every such person shall be entitled to have appropriated and granted to him or her such unappropriated land within the said colony as may be selected by him or her, the number of acres to be granted to him or her corresponding with the amount of the payment so appearing to have been made by him or her divided by the said uniform price per acre.

50. And we do direct, that no person within our said colony shall be entitled to purchase land therein except by payment made as aforesaid to the treasurer or deputy-treasurer of our said colony.

51. And we do further declare our pleasure to be, that and person within our United Kingdom, who shall pay to the agent for our said colony of New Zealand resident in London any sum or sums of money, in such amount as may from time to time be fixed by us for that purpose, for the

purchase of land situate in the said colony shall be entitled to receive from such agent a certificate of such payments; and on production of such certificate to our Commissioners of Colonial Land and Emigration in this our United Kingdom, every such person shall be entitled to receive from the said Commissioners a certificate that he or she hath become the purchaser of such a number of acres within the said colony as may be selected by him or her for that purpose, the number of acres to be appropriated to every such purchaser corresponding with the amount of the payments so appearing to have been made by him or her, divided by the said uniform price of land per acre.

52. And we do further declare our pleasure to be, that on the production by any such purchasers as 1ast aforesaid of any such certificate as last aforesaid from the said Commissioners of Colonial Land and Emigration, at the office of our said surveyor of Crown lands in the said colony New Zealand, the said purchaser shall be entitled to have appropriated and granted to him or her such unappropriated lands as may be selected by him or her under the same regulations as aforesaid.

53. Provided nevertheless, and it is our will and pleasure, that all such purchases so to be made as aforesaid, whether by payments in our colony of New Zealand or in this our United Kingdom, shall be made in lots, consisting of such number of acres as shall from time to time be fixed for that purpose by us or under our authority.

54. And we do further direct that grants of all lands, so to be appropriated as aforesaid, shall with all practicable speed after the appropriation thereof, be issued under the public seal of our said colony to the purchaser thereof, and that for ensuring method and punctuality in that respect a sufficient number of such grants, with blanks for the names of the purchasers, and for the description of the lands so to be purchased, shall be kept at the office of the surveyor-general of our said colony, all lands so to be granted as aforesaid being described in such grants with exact references to the charts and registers as aforesaid.

55. And we do further declare our pleasure to be, that any persons by whom such purchase of land as aforesaid shall have been made within this our United Kingdom, shall be entitled either to the free conveyance to the said colony of any emigrants who may be named by them to our Commissioners of Colonial Land and Emigration for the purpose, provided such emigrants shall fall within the rules to be approved and established on our behalf by one of our Principal Secretaries of State, and that the number of such emigrants shall not exceed such proportion to the amount paid for land, as may be fixed and determined on our behalf by one of our Principal Secretaries of State, or else shall be entitled to the payment of a bounty on the introduction of such emigrants as aforesaid into our said colony, according as the one course or the other may be provided by any rules and regulations hereafter to be established in that behalf by one of our Principal Secretaries of State.

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.

Appendix 3

Extracted from "The New Zealand Book of Events" Reed and Methuen at p275

June 15, 1839 Letters patent were issued to expand the territory of NSW to include the area encompassing NZ, from latitude 34º South to 47º 10' South, and from longitude 166º 5' East to 179º East. Gov Gipps of NSW was appointed Governor over "any territory which is or may be acquired in sovereignty by Her Majesty … within that group of islands in the pacific Ocean commonly called New Zealand". This was the first clear expression of intent to annex NZ.

Aug 15 Capt Hobson was appointed Consul to NZ and was authorised to negotiate with the Maoris for the recognition of the Crown's authority "over the whole or parts of those islands which they may be willing to place under Her Majesty's dominion". He was also appointed Lt-Gov (subordinate to Gov Gipps) over "that part of our Territory which is or may be acquired in Sovereignty in New Zealand". Although anticipatory, this shows a clear decision to incorporate all or parts of NZ in the Empire.

Jan 14, 1840 Gov Gipps proclaimed the Letters Patent of June 15, 1839, and announced the swearing-in of Capt Hobson, who had arrived in Sydney as Lt-Gov with his appointments and instructions. This is the date chosen by NZ legislators, in the English Laws Act of 1858, as the date English law became effective in NZ. The same date was acknowledged in the Supreme Court Act 1882.

Jan 29 Capt Hobson arrived in the Bay of Islands. Hobson was now drawing full pay for both his offices (Lt-Gov and Consul).

Jan 30 Hobson landed at Kororareka where he promulgated the Letters Patent of June 15, 1839. This was the first, undeniable, exercise of Crown authority in NZ.

Feb 6 The initial signing of the Treaty of Waitangi was on this day. NZ's entry into the Empire hinged on this document as an effective legal instrument, the date of Feb 6 can only relate to those parts of Northland whose chiefs signed on that day. Some 450 other signatures – which did not cover all of NZ – were obtained over the next few months.

May 21 Possibly to forestall constitution making by the New Zealand Co at Wellington, Hobson proclaimed British sovereignty over the North Island by cession (the Treaty of Waitangi) and the South Island by discovery. (Hobson was unaware that one of his subordinates was collecting signatures to the Treaty in the South Island). This proclamation may have been beyond Hobson's authority but Britain was empowered to ratify it retrospectively.

Jun 16 Before news on Hobson's proclamation had reached Sydney, the legislative Council of NSW passed an Act to extend the laws of NSW to "Her Majesty's Dominions in the Islands of New Zealand".

Aug 7 The British Parliament passed the New South Wales Continuance Act, authorising the Crown to make into a separate colony or colonies the islands of NZ which "now are or which hereafter may be" dependencies of NSW. As London had, as yet, received no word from Hobson, this statute reveals that the Letters Patent were never more than temporary expedient; NZ had always been seen as a separate colony. The fact that a statute was deemed necessary may indicate that the Colonial Office believed NZ to be a settled colony, not a colony acquired by a treaty.

Oct 2 Hobson's dispatches, containing his proclamations on May 21, arrived in London on Sept 28. They were approved or ratified, by their official appearance in the Gazette on Oct 2. The Crown, and the Government, recognised NZ as a British territory.

Nov 16 Acting under powers granted in the New South Wales Continuance Act of Aug 7, 1840, the Queen made the islands of NZ a separate colony. This charter effectively promoted Hobson from Lt-Gov to Gov, authorised the appointment of a Legislative Council and an Executive Council and empowered the Governor to appoint judges. These Letters patent create or "erect" NZ as a colony, separate from NSW, and inaugurate NZ as a Constitutional entity.

Appendix 4

New South Wales Act, 4 Vict., No. 7, Repealed

NEW SOUTH WALES ACT, 4 VICT., NO. 7, REPEALED.

No. II.

ORDINANCE to repeal within the said Colony of New Zealand a certain Act of the Governor and legislative Council of New South Wales made and passed in the fourth year of the reign of Her present Majesty and adopted under an Ordinance of the Governor and legislative Council of New Zealand for extending the Laws of New South Wales to the said Colony of New Zealand and which said Act of the Governor and Council of New South Wales is instituted *"An Act to empower the Governor of New South Wales to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land in New Zealand, and also to terminate any Commission issued under the same, and to authorise the Governor of the Colony of New Zealand to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land therein, and to declare all other titles except those allowed by the Crown null and void"*.

1. Be it therefore enacted and ordained by His Excellency the Governor in and over the said Colony of New Zealand with the advice and consent of the Legislative Council of the same Colony, That from and immediately after the passing of this Ordinance the said Act of the Governor and Council of New South Wales so adopted as aforesaid intituled "An Act to empower the Governor of New South Wales to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land in New Zealand," be and the same is hereby repealed and of no effect within the said Colony of New Zealand; and the said commission so issued by the said Governor of New South Wales under and by virtue of the powers for that purpose contained in the said Act is hereby determined and declared to be null and void, anything in the said Act in the contrary thereof notwithstanding.

2. And whereas it is expedient to remove certain doubts which have arisen in respect of titles of land in New Zealand, be it therefore declared enacted and ordained, That all unappropriated lands within the said Colony of New Zealand, subject however to the rightful and necessary occupation and use thereof by the aboriginal inhabitants of the said Colony, are and remain Crown or Domain Lands of Her Majesty, her heirs and successors, and that the sole and absolute right of pre-emption from the said aboriginal inhabitants vests in and can only be exercised by Her said Majesty, her heirs and successors, and that all titles to land in the said Colony of New Zealand which are held or claimed by virtue of purchases or pretended purchases gifts or pretended gifts conveyances or pretended conveyances leases or pretended leases agreements or other titles, either mediately or immediately from the chiefs or other individuals or individual of the aboriginal tribes inhabiting the said Colony, and which are not or may not hereafter be allowed by Her Majesty, her heirs and successors, are and the same shall be absolutely null and void: Provided and it is hereby declared that nothing in this Ordinance contained is intended to or shall affect the title to any land in New Zealand already purchased from Her Majesty's Government or which is now held under Her Majesty.

Appendix 5

No. 24 - Extract of a DESPATCH from Lord *John Russell* to Governor *Hobson*, dated Downing-street, 16 April 1841

No. 24.
Lord J. Russell to
Govenor Hobson,
16 April 1841.

No. 24

Extract of a DESPATCH from Lord *John Russell* to Governor *Hobson*, dated Downing-street, 16 April 1841

Para 56.

I HAVE laid before the Queen the Act of the Governor of New South Wales, passed with the advice and consent of the legislative council of that colony, in the fourth year of Her Majesty's reign,. intituled, "An Act to empower the Governor of New South Wales to appoint Commissioners with certain Powers to examine and report on Claims to Grants of Land in New Zealand."

Her Majesty has been graciously pleased to approve the general provisions of that Act as well as the more particular details which it comprises. But circumstances to which it, was impossible that the legislature of New South Wales should have adverted will probably 1ender the execution of it difficult if not impossible. The separation of New Zealand from New South Wales will render obsolete and impracticable those enactments, which require the interposition of the governor of the older colony. The arrangements which I have made with the New Zealand Company will forbid the application of the Act, in its present form, to the case of the lands to be granted to them.

To these considerations is to be added the remark, that I propose to commit these inquiries to the single commissioner appointed by Her Majesty for that purpose, and not to three joint commissioners as the Act has provided.

For these reasons it appears necessary that a new law on the subject should be proposed to the local legislature of New Zealand, to meet the various exigencies which I have pointed out, and any others which your experience may have brought to light. Subject to such variations, the Act of New South Wales may be followed as a safe and proper guide.

Her Majesty has therefore been pleased to disallow the Act passed by the governor of New South Wales with the advice of the legislative council of that colony. But as difficulties may possibly arise in obtaining from the legislature of New Zealand the necessary enactment in substitution for it, or as the immediate disallowance of the New South Wales Act may be productive of other inconveniences which at this distance it is impossible to anticipate, the Queen has been further pleased to authorize me to signify to you Her Majesty's pleasure that you do postpone the notification of Her Majesty's disallowance of the Act in question, if you should be of opinion that the disallowance of it would, on the whole, be injurious to the public service. In that case you will report to me the grounds of that opinion, and until you are in receipt of further instructions, the New South Wales Act will continue in force in New Zealand, so far as it may be capable of execution, although subject of course to any amendments which may in the interval have been made by yourself with the advice of the legislative council of New Zealand.

I have, &c.
(signed) .J. Russell.

No. 25 - (No. 241.) - Copy of a DESPATCH from Lord John Russell to Governor Sir George Gipps

No. 25.
Lord J. Russell to
Sir George Gipps
16 April 1841.

No. 25

(No. 241.)
Copy of a DESPATCH from Lord *John Russell* to Governor Sir *George Gipps.*

Sir, Downing-street 16 April 1841.

I TRANSMIT to you the copy of a despatch which I have this day addressed to the governor of New Zealand, signifying to that officer Her Majesty's decision on the Act passed by yourself, with the advice and consent of the Legislative Council of New South Wales, on the 4th of August 1840, entitled," An Act to empower the Governor of New South Wales to appoint Commissioners with certain Powers to examine and report on Claims to Grants of Land in New Zealand." Until you shall be apprised by Governor Hobson of the actual notification by him at New Zealand of Her Majesty's disallowance of the Act in question you will abstain from notifying within your government that it has been so disallowed.

You will clearly understand that the advice which has been tendered to Her Majesty on this occasion has not been suggested by any disapprobation of the enactment in question, in which, indeed, you strictly followed the instructions under which you were acting. You have every claim to the acknowledgments of Her Majesty's Government for the able and zealous exertions which you made in order to promote the success of that measure, but the altered circumstances of the case, consequent on the erection of New Zealand into a distinct government, and on the other occurrences mentioned in my despatch to Governor Hobson, have dictated and appear to require some deviation from the form though not from the spirit of the measures actually pursued. I have, however, as you will perceive, adverted to the possible misconceptions to which, from this distance from the scene of action, the confidential advisers of the Crown are unavoidably liable, and have taken what I trust may be an effectual security against the injurious consequences to which any such misconceptions might otherwise have given rise.

I have, &c.
(signed) .J. *Russell.*

Appendix 6

Grant 2 Bishop Pompallier

1827.
29 December

Bay of Islands District

KORORAREKA.
John Johnston.
Boundaries.

Deeds – No. 79

Kororareka Beach (South End), Bay of Islands District

Memorandum of an assignment made and entered into this 29th day of December in the year of our Lord 1827 Witnesseth that Kivie Kivie a Chief on Kororadika in New Zealand fir a consideration already received doth make over and confirm to John Johnston now residing at Kororadika his heirs and assigns for ever a certain portion of land situated at Kororadika as aforesaid and bounded in manner following that is to say in length along the Beach at low water mark in a north and south direction (as measured by a line) of one hundred and sixty eight feet in length and drawn from a certain Jager post and passing the end of a certain saw pit to the low water mark for a distance of one hundred and eighty (180) feet: and the said land is also bounded in an east and west direction by a line drawn at right angles from the said low water mark and extending up the hill for a distance of six hundred feet: and the said land is further Bounded by the lands on the South side Mai Anga commonly called King Charley, and on this North by the lands of Wareumu commonly called King George; And the consideration, mentioned above as having been received by the said Kivie Kivie and for which he grants the above mentioned land is noted on the other side at the foot of this Agreement. In Witness whereof the said Kivie Kivie has set his hand at Kororadika the day and year first above written.

Witness - (Signed) KIVIE KIVIE his x mark.
(Signed) John McLean.
John Matthew.

The above is a true copy of the deed of sale from Kivie Kivie to John Johnston.
Witness – JOHN ROBERTON.
Joseph Meyrick.
Receipt. Daniel Fitzpatrick.

The price paid for the above mentioned land is 2 muskets

1842.
26 November.

Extract from Commissioner's Report

Commissioner's report.

The purchase of this land from the Natives and its resale and transfer by the original purchaser John Johnston to Gilbert Mair, and again from the said Gilbert Mair to Benjamin Evans Turner, having been proved in Claim No. 232;
And the said Benjamin Evans Turner having admitted and sworn to his resale and transfer of this land to the Claimant (Bishop Pompallier):

Transfer from Turner to R. C. Mission.

The Commissioner therefore respectfully recommends that a Grant for the above-described land should be issued to the Right Rev. the Bishop Pompallier for the Catholic Mission, his heirs and assigns for ever. Excepting 100 feet from high-water mark. EDWARD L. GODFREY,
Kororikika, 26th November, 1842. Commissioner.

No. 391B.

O.L.C.

A True Transcript of Certified Copy of Original Deed and Extract from Commissioner's Report. H. HANSON TURTON.
Wellington, 18th December, 1879.

Appendix 7

Title of Ordinances and Statutes

Titles of Ordinances
Showing Amendments and Repeals

(1841-1853)

NOTE – This does not show any amendments, repeals or other provisions made by Provincial Legislatures on the various subjects.

No.		Page	Amendments, &c.	Repealed, &c.	Gazette of Confirmation by Her Majesty
1 …	Session 1, 1841 4 VICTORIA				
2	To repeal within the said Colony of New Zealand a certain Act of the Governor and Legislative Council of New South Wales made and passed in the fourth year of the reign of Her present Majesty, and adopted under an Ordinance of the Governor and legislative Council of New Zealand for extending the Laws of New South Wales to the said Colony of New Zealand, and which said Act of the Governor and Council of New South Wales is intituled "an Act to empower the "Governor of New South Wales to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land in New Zealand," and also to terminate any Commission issued under the same, and to authorize the Governor of the Colony of New Zealand to appoint Commissioners with certain powers to examine and report on Claims to Grants of Land therein, and to declare all other titles except those allowed by the Crown null and void.	4	…	Repealed, so far as repugnant to No. 32, 1856	5 Sept., 1842.

Titles of Statutes

No.		Page	Amendments, &c.	Repealed, &c.	Gazette of Confirmation by Her Majesty
1-13	Session 2, 1841-2. 5 VICTORIA				
14	To amend an Ordinance enacted by the Governor of New Zealand, with the advice and consent of the legislative Council thereof, Session I, No. 2.	12	…	…	Disallowed, 6 Sept., 1843.

No.		Page	Amendments, &c.	Repealed, &c.	Gazette of Confirmation by Her Majesty
1-2	Session 3, 1841-2. 7 VICTORIA				
3	To amend Ordinance Session I, No. 2.	123	…	…	

Appendix 8

Land Act 1877

Reserves

144. The Governor may from time to time, either by a general or particular description, and whether the same had been surveyed or not, reserve from sale temporarily, notwithstanding that the same may be then held under pastoral license, 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, embankments, quarries, gravel-pits, sites of markets, abattoirs, public pounds, baths, washhouses, mechanics' institutes, libraries, museums, or other institutions of instruction, county or municipal buildings, court-houses, gaols, prisons, or other public buildings, sites and grounds for schools, colleges, reformatories, hospitals, asylums, and charitable institutions, or for the purposes of any agricultural or pastoral associations, or for the growth and preservation of timber, gardens, parks or domains, places for the interment of the dead, or for the health, recreation, convenience, or amusement of the people, or for the use, support, or education of aboriginal natives of the colony, or for any purpose of public defence, safety, utility, advantage, or enjoyment; or as endowments for education.

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 of such notice, 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.

Regulations

169. The Governor shall have power from time to time to make rules, regulations, and orders for the purposes hereinbefore mentioned, to alter or rescind such rules, regulations, and orders to provide for the mode by which any land or allotment shall be surveyed and boundaries adjusted, for prescribing the form of and the conditions and mode of applying for licences and leases to be issued under this Act, and the conditions upon which the same shall be issued, for imposing any reasonable charge for surveys or fee for any document issued under the authority of this Act, for providing for all proceedings, forms of leases, licences, and other instruments, and for the execution of all other matters and things arising under and consistent with this Act and not herein expressly provided for, and for the more fully carrying out the objects and purposes and guarding against evasions and

violations of this Act; and all such regulations shall be signed by the Minister, and upon being published in the Gazette shall be valid in law, as if the same were enacted in this Act, and shall be judicially noticed; and all such rules, regulations, and orders shall be laid before both Houses of the Assembly within fourteen days after the making thereof, if Parliament be then sitting and, if Parliament be not then sitting, within fourteen days after the commencement of the next sitting of Parliament.

Land Act 1885

Regulations

4. The Governor shall have power from time to time to make rules, regulations and orders for the purposes of this Act, to alter or rescind such rules, regulations, and orders –

Providing for the mode by which any land or allotment shall be surveyed and boundaries adjusted;

For prescribing the form of and the conditions and mode of applying for licenses and leases to be issued under this Act, and the conditions upon which the same shall be issued;

For imposing any reasonable charge for surveys or fees for any document issued under the authority of this Act;

For providing for all proceedings, forms of leases, licenses, and other instruments, and for the execution of all other matters and things arising under and consistent with this Act and not herein expressly provided for;

And for the more fully carrying out the objects and purposes and guarding against evasions and violations of this Act.

All such regulations shall be signed by the Minister, and upon being published in the Gazette shall be valid in law, as if the same were enacted in this Act, and shall be judicially noticed; and all such rules, regulations, and orders shall be laid before both Houses of the Assembly within fourteen days after the making thereof, if Parliament be then sitting, and, if Parliament be not then sitting, within fourteen days after the commencement of the next sitting of Parliament.

Reserves

227. The Governor may from time to time either by a general or particular description, and whether the same has been surveyed or not, reserve from sale temporarily, notwithstanding that the same may been then held under pastoral license, any Crown lands which in his opinion are required for any of the following purposes – namely, 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, embankments, quarries, gravel-pits, sites of markets, abattoirs, public pounds, baths, washhouses, mechanics' institutes, libraries,

museums, or other institutions of instruction, county or municipal buildings, court-houses, gaols, prisons, or other public buildings, sites and grounds for schools, colleges, reformatories, hospitals, asylums, and charitable institutions, or for the purposes of any agricultural or pastoral associations, or for the growth and preservation of timber, gardens, parks or domains, places for the interment of the dead, or for the health, recreation, convenience, or amusement of the people, or for the use, support, or education of aboriginal natives of the colony, or for any purpose of public defence, safety, utility, advantage, or enjoyment; or as endowments for education; and also any land containing mineral or other springs which he may think should be so reserved for the public health, or any land wherein or whereon natural curiosities may exist of a character to be of national interest.

228. 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 of such notice, 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.

229. 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 …

Appendix 9

Land Act 1908

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, or 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.

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.

Land Act 1924

14. **Lands on seashore &c., excluded from sale.** – Notwithstanding any sale or other disposal of any unsurveyed rural or pastoral lands in any manner whatsoever, 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-General shall have the right, without liability to pay compensation, 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, or on the margin of any lake, or on any river-bank, or which are required for any of the purposes mentioned in section three hundred and fifty-nine hereof.

This section replaces s13 of the Land Act 1908.

129. **Reserves along seashore and banks of lakes, rivers, &c**. – 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.

This section replaces s122 of the Land Act 1908.

It does not apply to settlement land (Land Settlements Act 1925, s66); nor to land comprised in closed roads (Land laws Amendment Act 1929, s20).

Appendix 10

Conservation Act 1987 / [Part 4A – Marginal Strips / [24 Marginal strips reserved

[24 Marginal strips reserved

(1) There shall be deemed to be reserved from the sale or other disposition of any land by the Crown a strip of land 20 metres wide extending along and abutting the landward margin of—

(a) Any foreshore; or

(b) The normal level of the bed of any lake not subject to control by artificial means; or

(c) The bed of any river or any stream [(not being a canal under the control of a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986 and used by the State enterprise for, or as part of any scheme for, the generation of electricity)], being a bed that has an average width of 3 metres or more.

(2) There shall be deemed to be reserved from the sale or other disposition by the Crown of any land extending along and abutting the landward margin of any lake controlled by artificial means a strip of land that—

(a) Is 20 metres wide; or

(b) Has a width extending from the maximum operating water level to the maximum flood level of the lake,—

whichever is the greater.

[(2A) Where the Crown proposes to sell or otherwise dispose of any land, the responsible department of State or agency shall notify the Director-General of the proposal; and the sale or other disposition shall have no effect unless and until that requirement is complied with.]

(3) Every strip of land of any width that, immediately before the commencement of this section, was reserved from sale or other disposition on any Crown land by or under this Act or any other Act, whether or not the strip was reserved for any specified purpose, shall be deemed to be reserved to the Crown as marginal strip of the same width.

(4) Nothing in this section shall affect any right, title, or interest any person may have in respect of any assets or improvements lawfully existing on any marginal strip at the commencement of this section.

(5) Nothing in this section shall limit or affect section 230 of the Resource Management Act 1991.]

(6) Every disposition of any land by the Crown to a State enterprise pursuant to the State-Owned Enterprises Act 1986, on or after the commencement of this section (whether the

agreement to dispose of that land was entered into before that date or is entered into after that date), shall be deemed to be a disposition of land for the purposes of this section.

(7) Notwithstanding subsection (6) of this section, where the freehold of any land subject to a lease or licence under the Land Act 1948 is transferred by the Crown to [Landcorp Farming Limited], the reservation of any marginal strip on any part of the land to which the lease or licence relates shall not have effect until either the lease or licence is renewed or the freehold of the area to which the lease or licence relates is transferred to the lessee or licensee, whichever first occurs.

[(7A) Every disposition of land by the Crown to a Crown Research Institute pursuant to the Crown Research Institutes Act 1992 shall be deemed to be a disposition of land for the purposes of this section.]

[(7B) Nothing in this section applies to the vesting or proposed vesting of any reserve under section 26 of the Reserves Act 1977.]

(8) Except as otherwise expressly provided, this section shall apply to the disposition of any land by the Crown under the provisions of any enactment.

[(9) For the purposes of this section, a disposition by the Crown in relation to any land, includes—

(a) The grant of a Crown forestry licence under the Crown Forest Assets Act 1989:

(b) The grant or renewal of a lease or licence under the Land Act 1948:

(c) The vesting, pursuant to the New Zealand Railways Corporation Restructuring Act 1990, of any land held by the Crown or the New Zealand Railways Corporation in a Crown transferee company within the meaning of section 2 of that Act:

(d) The grant or renewal of a lease or licence of any land pursuant to section 12 of the New Zealand Railways Corporation Restructuring Act 1990:

(e) The sale or other disposition of land held by the New Zealand Railways Corporation to a Crown transferee company within the meaning of section 2 of the New Zealand Railways Corporation Restructuring Act 1990 or to any other person.]]

Status Compendium

Hist. s24(1)(c): Words "(not being a ... generation of electricity)" substituted for omitted words "(not being a canal under the control of the Electricity Corporation of New Zealand Limited used by the Corporation for, or as part of any scheme for, the generation of electricity)" on 14 May 1999 by 1998 No 88, s100 & SR 1999/115/2.

Hist. s24(2A): Inserted on 13 March 1996 by 1996 No 1, s9(1).

Hist. s24(5): Repealed and substituted on 1 October 1991 by 1991 No 69, s362. The repealed s24(5) is listed below for reference.

"(5) Nothing in this section shall limit or affect section 289 of the Local Government Act 1974."

Hist. s24(7): Words "Landcorp Farming Limited" substituted for omitted words "Land Corporation [] Limited" on 12 April 2001 by SR 2001/23/4.

Hist. s24(7): Words “of New Zealand” omitted after word “Corporation” on 13 March 1996 by 1996 No 1, s9(2).

Hist. s24(7A): Inserted on 1 July 1992 by 1992 No 47, s46(1) and (3).

Hist. s24(7B): Inserted on 13 March 1996 by 1996 No 1, s9(3).

Hist. s24(9): Repealed and substituted on 28 August 1990 by 1990 No 106, s2. The repealed s24(9) is listed below for reference.

“(9) For the purposes of this section, a 'disposition', in relation to any land, includes the grant of a Crown forestry licence under the Crown Forest Assets Act 1989, and also includes the grant or renewal of a lease or licence under the Land Act 1948.”

Hist. s24: Repealed and Part 4A (comprising s24 to s24J) inserted on 10 April 1990 by 1990 No 31, s15. The repealed s24 is listed below for reference.

“24. MARGINAL STRIPS—

“(1) 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.

“(3) Subject to subsection (5) of this section, if satisfied that the retention in public ownership of any part (not being a part less than 3 metres from the tide mark, level, or bank concerned) of any marginal strip is neither necessary to ensure reasonable and practical public access to the adjacent water nor desirable for conservation purposes, the Minister may, by notice in the Gazette describing the part, declare it not to be required as marginal strip.

“(4) Subject to subsection (5) of this section, if satisfied that all or part of a marginal strip—

“(a) Was, immediately before the commencement of this Act, occupied by—

“(i) Any aqueduct, bridge, boom anchor, canal, control gate, dam, flume, headrace, pen-stock, power station, screen, spillway, switching gear, surge chamber, tailrace, transmission tower, tunnel, or weir, used by Electricity Corporation of New Zealand Limited for or in connection with the generation, transmission, or supply of electricity; or

“(ii) Any similar structure or device so used,—

“whether or not its construction was then completed; or

“(b) Will necessarily be used in connection with any such structure or device; or

“(c) Should not be open to the public because of the dangers of any such structure or device,—

the Minister may, by notice in the Gazette, describing the strip or part, declare it be required in connection with electricity works; and may thereafter dispose of it to the corporation without complying with section 26 of this Act.

"(5) Before publishing a notice under subsection (3) or subsection (4) of this section, the Minister shall give public notice of intention to do so; and section 49 of this Act shall apply accordingly.

"(6) Subject to subsection (2) of this section, the Minister may, if it is in accordance with the management plan of a marginal strip,—

"(a) Enter into an agreement with the owner of any adjacent land for the owner to use or develop all or any part of the strip; and

"(b) In accordance with any such agreement, close all or any part of the strip under section 13(1)(a) of this Act:

"(c) Authorise the Director-General to do any work on the strip

"(7) If satisfied that it is in the public interest to do so, the Minister may refuse to renew any lease of or permit issued in respect of any conservation area, unless the lessee or permit-holder surrenders the lease or permit in respect of—

"(a) All marginal strips forming part of the area; or

"(b) Such of those strips, and such parts of any of those strips, as the Minister specifies.

"(8) Where any Crown land or State forest land is, on or after the commencement of this Act, vested in or transferred to a State enterprise under the State-Owned Enterprises Act 1986, so much of the land as would, if it were all a conservation area, be a marginal strip shall thereupon become a marginal strip."

Conservation Act 1987 / [Part 4A – Marginal Strips / [24A Power to reduce width of marginal strip

[24A Power to reduce width of marginal strip

(1) Notwithstanding section 24 of this Act, in the case of a marginal strip extending along and abutting the landward margin of the sea or a lake, the Minister may [, at any time before the disposition by the Crown of the land adjoining the marginal strip,] approve the reduction of the width of the strip to not less than 3 metres if he or she is satisfied that its value in terms of the purposes specified in section 24C of this Act will not be diminished.]

[(2) Notwithstanding section 24 of this Act, in the case of land extending along and abutting the bed of a river or stream where—

(a) The bed is not less than 3 metres in width; and

(b) The land (including the marginal strip) contains not more than 2 hectares,—

the Minister may, at any time before the disposition by the Crown of the land, approve the reduction of the width of the strip to not less than 3 metres if he or she is satisfied that its value in terms of the purposes specified in section 24C of this Act will not be diminished.]

Status Compendium

Hist. s24A(1) inserted words ", at any time before the disposition by the Crown of the land adjoining the marginal strip," on 13 March 1996 by 1996 No 1, s10(1).

Hist. s24A(2) inserted on 13 March 1996 by 1996 No 1, s10(2).

Hist. Part 4A (comprising s24 to s24J) inserted on 10 April 1990 by 1990 No 31, s15.

Conservation Act 1987 / [Part 4A – Marginal Strips /[24AA Power to increase width of marginal strip

[24AA Power to increase width of marginal strip

(1) Where the Crown proposes to sell or otherwise dispose of any land, the proposal shall be subject to the succeeding provisions of this section.

(2) During the period of 20 working days commencing on the day after the date of the receipt of a notification under section 24(2A) of this Act in respect of the proposal,—

(a) The sale or other disposition shall not proceed; and

(b) The Director-General shall notify the responsible department or agency whether or not he or she intends to investigate the proposal to ascertain whether or not it is appropriate to increase the width of any marginal strip that would be reserved from the sale or other disposition.

(3) If the Director-General fails to notify the responsible department or agency in accordance with subsection (2)(b) of this section, the department or agency may proceed with the sale or other disposition after the expiration of the period specified in that subsection and section 24 of this Act shall apply accordingly.

(4) If the Director-General notifies the responsible department or agency in accordance with subsection (2)(b) of this section that he or she intends to investigate the proposal,—

(a) The prohibition contained in subsection (2)(a) of this section shall be deemed to be extended by a further 20 working days; and

(b) During that further period of 20 working days, the Minister shall advise the responsible department or agency whether or not he or she requires the reservation of a marginal strip having a width exceeding 20 metres, and, where the Minister requires the reservation of such a marginal strip, he or she shall also specify the width of the marginal strip to be reserved.

(5) In considering whether to require the reservation of any marginal strip having a width exceeding 20 metres, the Minister shall have regard to whether increasing the width of the marginal strip is necessary—

(a) To provide effective access along the strip; and

(b) To maintain the value of the strip in terms of the purposes specified in section 24C of this Act.

(6) Where the reservation of any marginal strip under section 24(1) of this Act creates a residual area of land that is of such size or shape that it has little or no potential use either alone or in conjunction with the remainder of the land being sold or disposed of, that residual area of land may be added to the marginal strip by agreement between the responsible department or agency, and the Minister.

(7) Where the disposition takes the form of the renewal of a lease or licence under the Land Act 1948 that is referred to in section 24(7) of this Act, the lessee or licensee is entitled to a reduction in rent or fees or royalties for any injurious affection to the lessee or licensee caused by any reservation of a marginal strip having a width exceeding 20 metres.

(8) Any reduction in rent or fees or royalties payable under this section shall be assessed by the Minister responsible for the administration of the land.

(9) A lessee or licensee shall not be entitled to a reduction in rent or fees or royalties by reason only of any increase in the width of any marginal strip.

(10) The costs of and incidental to the investigation and assessment of increasing the width of any marginal strip shall be paid by the Director-General.

(11) The Minister may require that the whole or any part of a marginal strip be of a width exceeding 20 metres.]
{ Editorial Note: For reservation of Purakaunui marginal strip see 1998 No 97, s425(4). }

Hist. s24AA inserted on 13 March 1996 by 1996 No 1, s11.

Conservation Act 1987 / [Part 4A – Marginal Strips /[24B Power to declare certain dispositions to be exempt from section 24

[24B Power to declare certain dispositions to be exempt from section 24

(1) Subject to subsection (2) of this section, the Minister may at any time before the disposition by the Crown of any land extending along and abutting the bed of any river or stream (being a bed of not less than 3 metres in width), by notice in the Gazette, declare that section 24 of this Act shall not apply to the proposed disposition.

(2) The Minister may make a declaration under subsection (1) of this section only if satisfied—
- (a) That the land has little or no value in terms of the purposes specified in section 24C of this Act; or
- (b) That any value the land has in those terms can be protected effectively by another means.

(3) Notwithstanding subsection (2) of this section, where the Minister proposes to grant an exemption under this section in respect of the renewal of a lease or licence under the Land Act 1948 but is precluded from doing so by that subsection, the Minister may grant the exemption if satisfied that the proposal is equitable and in the public interest.

(4) The Minister may, by notice in the Gazette, declare that section 24 of this Act shall not apply to any proposed disposition of—

(a) Land that is part of the core assets of [a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986 that is a generator of electricity]; or

(b) Land that is required in connection with electricity works.

(5) A notice under subsection (4)(a) of this section shall have effect only so long as the core assets concerned remain assets of the [State enterprise].

(6) For the purposes of subsection (4)(a) of this section, the term "core assets" means—

(a) Any aqueduct, bridge, boom anchor, canal, control gate, dam, flume, headrace, penstock, power station, screen, spillway, switching gear, surge chamber, tailrace, transmission tower, tunnel, or weir, [used by a State enterprise within the meaning of the State-Owned Enterprises Act 1986 for or in connection with the generation, transmission, or supply of electricity]; or

(b) Any similar structure or device so used.

(7) Nothing in section 24 of this Act shall apply to any disposition in respect of which a notice is given under this section.]

Status Compendium

Hist. s24B(4)(a): Words "a State enterprise ... generator of electricity" substituted for omitted words "the Electricity Corporation of New Zealand Limited" on 14 May 1999 by 1998 No 88, s100 & SR 1999/115/2.

Hist. s24B(5): Words "State enterprise" substituted for omitted word "Corporation" on 14 May 1999 by 1998 No 88, s100 & SR 1999/115/2.

Hist. s24B(6)(a): Words "used by a ... supply of electricity" substituted for omitted words "used by the Electricity Corporation of New Zealand Limited for or in connection with the generation, transmission, or supply of electricity" on 14 May 1999 by 1998 No 88, s100 & SR 1999/115/2.

Hist. Part 4A (comprising s24 to s24J) inserted on 10 April 1990 by 1990 No 31, s15.

Conservation Act 1987 / [Part 4A – Marginal Strips / [24BA Notification of intention to reduce marginal strip or to grant exemption

[24BA Notification of intention to reduce marginal strip or to grant exemption

(1) Where the Minister receives an application under section 24A (which relates to the reduction of the width of marginal strips) or section 24B (which relates to exemptions) of this Act, the Minister shall consult the relevant Conservation Board and Fish and Game Council.

(2) On being satisfied that it is reasonable in the circumstances to do so, the relevant Conservation Board or Fish and Game Council may request the Minister to publicly notify the proposal.

(3) On receipt of a request under subsection (2) of this section that the Minister considers reasonable in the circumstances, the Minister may publicly notify the proposal and section 49(1) of this Act shall apply accordingly; but the Minister is not obliged to publicly notify the proposal.

(4) In considering whether or not it is reasonable in the circumstances to publicly notify an application, the Conservation Board or Fish and Game Council or the Minister, as the case may be, shall have regard to—
   (a) The purposes specified in section 24C of this Act; and
   (b) The interests of the public in marginal strips; and
   (c) The potential costs of notification (including the costs of public notification) that are likely to be incurred by the seller and the purchaser of the land.

(5) The responsible department or agency disposing of the land shall pay to the Minister all the costs of and incidental to the public notification of the proposal in accordance with section 49 of this Act.]

Hist. s24BA inserted on 13 March 1996 by 1996 No 1, s12.

Conservation Act 1987 / [Part 4A – Marginal Strips /[24C Purposes of marginal strips

[24C Purposes of marginal strips

Subject to this Act and any other Act, all marginal strips shall be held under this Act—
   (a) For conservation purposes, in particular—
      (i) The maintenance of adjacent watercourses or bodies of water; and
      (ii) The maintenance of water quality; 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.]

Status Compendium
Hist. 4A (comprising s24 to s24J) inserted on 10 April 1990 by 1990 No 31, s15.

Conservation Act 1987 / [Part 4A – Marginal Strips / [24D Reservation of marginal strips to be recorded

[24D Reservation of marginal strips to be recorded

(1) Upon the registration of any disposition by the Crown of any land under the Land Transfer Act 1952, the District Land Registrar of the land registration district affected shall, without fee, record on the certificate of title for that land a statement to the effect that the land to which the certificate of title relates is subject to this Part of this Act.

[(1A) Upon being notified of any reduction in the width of any marginal strip under section 24A or any increase in the width of any marginal strip under section 24AA or any exemption under section 24B of this Act, where there is a certificate of title for the land under the Land Transfer Act 1952, the District Land Registrar shall, without fee, record the reduction or increase or exemption on the certificate of title.]

(2) Upon being notified of any disposition by the Crown of any land not registered under the Land Transfer Act 1952, the Chief Surveyor shall, without fee, record on the proper plans and records of the land registration district affected a statement to the effect that the land so transferred is subject to this Part of this Act.

[(2A) Upon being notified of any reduction in the width of any marginal strip under section 24A or any increase in the width of any marginal strip under section 24AA or any exemption under section 24B of this Act, where the land is not registered under the Land Transfer Act 1952, the Chief Surveyor shall, without fee, record the reduction or increase or exemption on the proper plans and records.]

(3) The Chief Surveyor shall, without fee, in the manner the Chief Surveyor considers most appropriate, cause the proper plans of every land registration district to show the marginal strips [(including details of the reduction in the width of any marginal strip under section 24A or the increase in the width of any marginal strip under section 24AA of this Act)] within that district.

(4) All land that is subject to this Part of this Act shall remain subject to this Part and the statements specified in subsections (1) and (2) of this section shall continue to be recorded on the certificates of title for that land and on all subsequent certificates of title for that land and on all the proper plans and records of the land registration district affected, as the case may be, notwithstanding—

(a) Any subsequent subdivision of that land; or

(b) Any subsequent transfer by sale or otherwise of that land.

(5) Every statement recorded on a certificate of title in compliance with subsection (1) of this section shall be deemed to sufficiently protect any reservation made by this Part of this Act in respect of any portion of the land comprised in that certificate of title, and no certificate of title shall be impeached on the ground of uncertainty or otherwise on account of any such reservation.

(6) The land comprised in any certificate of title that bears a statement recorded in compliance with subsection (1) of this section—

(a) Shall be deemed to be all the land described in that certificate of title, with the exception of any portion that is deemed to be reserved as marginal strip under this Part of this Act; and

(b) May be defined for the purposes of the issue of a certificate of title as if this Part of this Act had not been passed.

(7) Notwithstanding anything in the Land Transfer Act 1952, land reserved as marginal strip under section 24 of this Act shall not be required to be surveyed for the purposes of that Act.]

Status Compendium

Hist. s24D(1A) inserted on 13 March 1996 by 1996 No 1, s13(1).

Hist. s24D(2A) inserted on 13 March 1996 by 1996 No 1, s13(2).

Hist. s24D(3) inserted words "(including details of ... of this Act)" on 13 March 1996 by 1996 No 1, s13(3).

Hist. Part 4A (comprising s24 to s24J) inserted on 10 April 1990 by 1990 No 31, s15.

Conservation Act 1987 / [Part 4A – Marginal Strips / [24E Exchange of marginal strips

[24E Exchange of marginal strips

(1) The Minister may, by notice in the Gazette, authorise the exchange of any marginal strip for another strip of land.

(2) The Minister shall not authorise the exchange of any marginal strip unless the Minister is satisfied that the exchange will better achieve the purposes specified in section 24C of this Act.

(3) The land taken by the Crown in exchange for any marginal strip shall be deemed to be reserved as marginal strip.

(4) The Minister may authorise the payment or receipt by the Crown of money by way of equality of exchange in any case under this section; and all money so received shall be paid into the Department of Conservation Grants and Gifts Trust Account, and shall be applied, without further appropriation than this section, for the purposes of this Act.

(5) The Minister or the Director-General may, on behalf of the Crown, do all such things as may be necessary to effect any exchange authorised under this section.

(6) District Land Registrars are hereby authorised and directed to make such entries in registers and do all such other things as may be necessary to give effect to exchanges authorised under this section.]

Status Compendium
Hist. Part 4A (comprising s24 to s24J) inserted on 10 April 1990 by 1990 No 31, s15.

Conservation Act 1987 / [Part 4A – Marginal Strips / [24F Right of Crown to half of bed of river adjoining former land of the Crown

[24F Right of Crown to half of bed of river adjoining former land of the Crown

Notwithstanding any other enactment or rule of law, where the Crown owns part of the bed of a non-navigable river or stream adjoining any land (being a bed of not less than 3 metres in width) and disposes of that land, that part of the bed of that river or stream shall remain owned by the Crown.]

Hist. Part 4A (comprising s24 to s24J) inserted on 10 April 1990 by 1990 No 31, s15.

Conservation Act 1987 / [Part 4A – Marginal Strips / [24G Effect of change to boundary of marginal strips

[24G Effect of change to boundary of marginal strips

(1) Where, for any reason, the shape of any foreshore or of the margin of any lake or reservoir or of any bay or inlet of any lake or reservoir is altered and the alteration affects an existing marginal strip, a new marginal strip shall be deemed to have been reserved simultaneously with each and every such alteration.

(2) Where, for any reason, the course of any river or stream is altered and the alteration affects an existing marginal strip, a new marginal strip shall be deemed to have been reserved simultaneously with each and every such alteration.

(3) With respect to any foreshore, to any lake or reservoir and to any bay or inlet of any lake or reservoir, and to any river or stream, a marginal strip shall be reserved by subsection (1) or subsection (2) of this section on all land of the Crown, and on all land the title to which is subject to this Part of this Act, and on no other land.

(4) Every marginal strip reserved by subsection (1) or subsection (2) of this section shall be of such dimensions and be situated as if the marginal strip had been reserved under section 24

of this Act, and shall extinguish either in whole or in part, as the case may require, the existing reservation of the existing marginal strip which would have continued but for the alterations referred to in those subsections.

(5) Nothing in this section shall affect any right, title, or interest any person may have in respect of any assets or improvements existing on any marginal strip at the time such marginal strip is reserved by subsection (1) or subsection (2) of this section.

(6) Subject to this section, the provisions of this Act shall apply to every marginal strip reserved by subsection (1) or subsection (2) of this section as if such marginal strip had been reserved by section 24 of this Act.

(7) Nothing in this section shall apply to any marginal strip reserved by section 24(3) of this Act.]

Status Compendium
Hist. Part 4A (comprising s24 to s24J) inserted on 10 April 1990 by 1990 No 31, s15.

Conservation Act 1987 / [Part 4A – Marginal Strips / [24H Management of marginal strips

[24H Management of marginal strips

(1) The Minister may from time to time appoint suitable persons to be managers of marginal strips.

(2) Subject to subsection (6)(c) of this section, the Minister may appoint one of the following persons to be the manager of any marginal strip:

(a) The owner for the time being of the land adjoining that strip:

(b) Some other suitable person, if the Minister considers that person to be more suitable than the adjoining owner.

{ Editorial Note: Prior written consent of Minister of Conservation required before preliminary proposal to holder of reviewable lease (or instrument) by the Commissioner may designate

(a) Marginal strips in Conservation area as remaining conservation area:

(b) Land to be restored to, or retained by, the Crown as conservation area:

subject to appointment of a manager under this subsection. See section 41(1)(d). }

(3) The Crown shall manage all marginal strips around controlled lakes and reservoirs; but any costs relating to any such strip that are costs arising out of electricity generation in the area of the strip shall be payable by the person or body responsible for that electricity generation.

(4) Subject to this section, the manager of a marginal strip shall—

(a) Manage the strip in a way that best serves the purposes specified in section 24C of this Act; and

(b) Enable members of the public to have access along the strip.

(5) Subject to this section, the manager of a marginal strip may make improvements to the strip, and the improvements may include such planting or harvesting of crops or trees as may be provided for in any Crown forestry licence under the Crown Forest Assets Act 1989 affecting or relating to the strip or in any agreement between the manager and the Crown.

(6) In the case of the holder of a Crown forestry licence under the Crown Forest Assets Act 1989, the following provisions shall also apply:

(a) The licence holder may manage and harvest exotic plantation trees existing at the time of the grant of the licence on any marginal strip adjoining the land to which the licence relates:

(b) The licence holder may carry out one replanting of such trees on the strip:

(c) The Minister may appoint either the licence holder or the Director-General to be manager of the strip, but shall not appoint any other person to be the manager.

{ Editorial Note: For application re—

(a) Ngai Tahu claims settlement see 1998 No 97, s40:

(b) Pouakani claims settlement see 2000 No 90, s24. }

(7) The manager of a marginal strip may request the Minister to close temporarily the strip under section 13 of this Act where any operation proposed on the strip will significantly affect public safety or where fire hazard conditions exist.

(8) The manager of a marginal strip shall comply with any reasonable requirements or restrictions imposed in respect of the strip by the Minister by notice in writing to the manager; and the Minister shall impose such requirements or restrictions, or both, as the Minister considers reasonably necessary or expedient to protect the strip, having particular regard to the maintenance of riparian vegetation, wildlife, water quality, the health of aquatic life, and to maintain access to and the recreational use of the strip.

(9) The Minister shall not require the manager of any marginal strip to fence off any part of that strip, or to undertake any other works on or relating to that strip, unless the expenses associated with such fencing or other works are borne by the Crown.

(10) The Minister shall consult the appropriate manager where—

(a) An application for a licence to mine in a marginal strip is being considered; or

(b) Any complaint relating to a marginal strip is being investigated; or

(c) Any requirement or restriction under subsection (8) of this section is being proposed.

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

(12) Subject to subsection (9) of this section, any expense incurred by a manager under this section shall be borne by the manager.

(13) Every manager of a marginal strip commits an offence who—

(a) Knowingly damages the marginal strip or causes to be damaged the strip or any part of it; or

(b) Knowingly uses the marginal strip for any purpose contrary to any provision of or to any requirement imposed under this Part of this Act.]

Penalty

Hist. Part 4A (comprising s24 to s24J) inserted on 10 April 1990 by 1990 No 31, s15.

Conservation Act 1987 / [Part 4A – Marginal Strips / [24I Easements

[24I Easements

Repealed

Hist. s24I repealed on 1 July 1996, by 1996 No 1, s15(1). The repealed s24I is listed below for reference.

"[24I. EASEMENTS—

"(1) The Minister may, after having due regard to section 24C of this Act and after giving notice in writing to the manager of the marginal strip concerned, grant an easement over the strip.

"(2) For the purposes of this section, the Minister shall be deemed to be the registered proprietor of marginal strips.]"

Hist. Part 4A (comprising s24 to s24J) inserted on 10 April 1990 by 1990 No 31, s15.

Conservation Act 1987 / [Part 4A – Marginal Strips / [24J Resumption of marginal strips by Crown

[24J Resumption of marginal strips by Crown

(1) On giving 90 days notice in writing to the manager of a marginal strip or such longer period not exceeding 6 months as may be provided for in any agreement between the manager and the Crown, the Minister, on behalf of the Crown, may resume the management of the strip.

(2) Subject to subsection (3) of this section, where the Crown resumes the management of a marginal strip, it shall be liable to pay to the manager of the strip—

(a) Compensation for any improvements made to the strip by the manager; and

(b) The manager's reasonable administration costs associated with the Crown's resumption of the strip.

(3) A manager shall have no right to be compensated for improvements made to or erected on the marginal strip without the prior consent of the Minister as required by section 24H(11) of this Act.

(4) If there is any dispute or difference between the manager of any marginal strip and the Crown as to any amount the Crown is liable to pay under subsection (2) of this section, the amount shall be fixed by arbitration in accordance with the [Arbitration Act 1996].

(5) For the purposes of any such arbitration, this section shall be deemed to be a submission to arbitration within the meaning of the [Arbitration Act 1996], and the reference shall be deemed to be to 2 arbitrators, one to be appointed by the Minister, and the other by the manager.

(6) Notwithstanding subsection (4) of this section, the parties may agree on the amount to be paid under subsection (2) of this section, either before or after the matter is submitted to arbitration, and, if the agreement is made after the date of any award of arbitration, the award shall be deemed to be cancelled.]

Hist. s24J(4) reference to "Arbitration Act 1996" substituted for reference to "Arbitration Act 1908" on 1 July 1997 by 1996 No 99, s18 & 1924 No 11, s21(1).

Hist. s24J(5) reference to "Arbitration Act 1996" substituted for reference to "Arbitration Act 1908" on 1 July 1997 by 1996 No 99, s18 & 1924 No 11, s21(1).

Hist. Part 4A (comprising s24 to s24J) inserted on 10 April 1990 by 1990 No 31, s15.

Conservation Act 1987 / [Part 4A – Marginal Strips / [24K Provisions applying in relation to land vested under New Zealand Railways Corporation Restructuring Act 1990

[24K Provisions applying in relation to land vested under New Zealand Railways Corporation Restructuring Act 1990

(1) In this section and in section 24L of this Act—

Crown transferee company has the same meaning as in section 2 of the New Zealand Railways Corporation Restructuring Act 1990:

Railway operator has the same meaning as in section 2 of the New Zealand Railways Corporation Restructuring Act 1990.

(2) The provisions of section 24D of this Act shall apply in relation to a disposition of land of the kind referred to in section 24(9)(c) of this Act with such modifications as shall be necessary and as if the reference in subsection (1) of that section to the registration of any disposition by the Crown were a reference to the registration of a Crown transferee company as the proprietor of the land in accordance with section 9(1)(a) of the New Zealand Railways Corporation Restructuring Act 1990.

(3) This Part of this Act (except section 24L) does not apply to—

(a) Land within an area of 25 metres of a line drawn midway between the rails of a railway line:

(b) Land approved by the Minister by notice in the Gazette as being required for the purpose of an alteration to the route of an existing railway line.

(4) The Minister shall give a notice under subsection (3)(b) of this section in any case where he or she is satisfied that—

(a) The land is reasonably required for the purposes of altering the route of the railway line; and

(b) The value in terms of the purposes specified in section 24C of this Act of the land adjacent to the railway line will not be diminished any more than is reasonably necessary for the purposes of the proposed alterations to the railway line.

(5) In giving an approval under subsection (3)(b) of this section the Minister may impose such conditions as he or she thinks fit in connection with the construction of the proposed alterations to the railway line.

(6) Where, in relation to land of the kind referred to in subsection (3)(b) of this section, a statement that the land is subject to this Part of this Act has, in accordance with section 24D of this Act, been recorded on the certificate of title to the land or on the proper plans and records of the land registration district affected, the District Land Registrar of the land registration district affected or the Chief Surveyor, as the case may be, shall make such alterations to any existing certificates of title for that land or to the plans and records of the land registration district, as the case may be, as shall be necessary for the purpose of recording the fact that the land is no longer subject to this Part of this Act.

(7) Where, in relation to any land of the kind referred to in subsection (3) of this section,—

(a) The railway line is removed permanently; or

(b) The railway line ceases to be operated by a railway operator; or

(c) In the case of land referred to in a notice in the Gazette published under subsection (3)(b) of this section, the Minister declares, by notice in the Gazette, that the land or any part of it is no longer required for the purposes of the alteration to the railway line—

as the case may be,—

the land shall immediately become subject to this Part of this Act and the provisions of section 24D of this Act shall apply with such modifications as shall be necessary and as if—

(d) The reference in subsection (1) of that section to the registration of any disposition by the Crown were a reference to land becoming subject to this Part of this Act by virtue of this subsection; and

(e) The reference in subsection (2) of that section to notification of any disposition by the Crown were a reference to notification of land becoming subject to this Part of this Act by virtue of this subsection.

(8) Nothing in this Part of this Act limits or affects the application of sections 30 and 31 of the New Zealand Railways Corporation Act 1981 or section 31 of the New Zealand Railways Corporation Restructuring Act 1990.]

Hist. s24K inserted on 28 August 1990 by 1990 No 106, s3.

Conservation Act 1987 / [Part 4A – Marginal Strips / [24L Public access rights

[24L Public access rights

Every railway operator must allow members of the public to have access on foot over land that would, but for subsection (3) of section 24K of this Act, be reserved as a marginal strip, except land that is within 5 metres of a line drawn midway between the rails of a railway line, unless, in the opinion of the railway operator, such access would be likely to endanger the safety of persons or property.]

Hist. s24L inserted on 28 August 1990 by 1990 No 106, s3.

Appendix 11

Land Subdivision in Counties Act 1946

11.

(1) On every scheme plan submitted under the foregoing 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 of 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 not 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 [Maori] land within the meaning of [the Maori Affairs Act 1953].

(2) In any case where a strip of land is set aside 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 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 [except to such extent (if any) as the Minister in his discretion allows. The Minister's decision under this subsection shall be final].

(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.

In the second proviso to subs. (1) the term "Maori" was substituted for the term 'native" by s2(2) of the Maori Purposes Act 1947; and the Maori Affairs Act 1953, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Maori Land Act 1931.

In subs. (3) the words in square brackets were added by s12 of the Land Subdivision in Counties Amendment Act 1953.

Appendix 12

Counties Amendment Act 1961

29. Reserves along seashore and banks of lakes, rivers, etc – (1) On every scheme plan submitted to the Council under the provisions of this Part of this Act there shall be set aside as reserved for public purposes a strip of land not less than 66 feet in width along the mean high-water mark of the sea and of its bays, inlets, or creeks, and along the margin of every lake with an area in excess of 20 acres, and, unless the Council, with the consent of the Minister of Lands, considers it unnecessary so to do, along the banks of all rivers and streams which have an average width of not less than 10 feet, not being rivers or streams, or parts of rivers or streams, exempted from the provisions of the subsection pursuant to subsection (4) of this section:

Provided that the Council, with the consent of the Minister of Lands, may approve the reduction of the width of the strip of land to a width of not less than 10 feet if in its 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, 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.

[(1A) The strip of land required to be reserved pursuant to subsection (1) of this section shall be so reserved only in respect of so much of the land in the scheme plan as abuts on the sea, lake, river, or stream as aforesaid and adjoins any allotment having an area of less than 10 acres.]

[(1B) Where –

(a) Pursuant to subsection (1) of this section or the provisions of any other enactment (whether passed before or after the commencement of this subsection, and whether or not in force at the commencement of this subsection), a strip of land less than 66 feet in width has been set aside as reserved for public purposes along the mean high-water mark of the sea or of any of its bays, inlets, or creeks, or along margin of any lake, or along any bank of any river or stream and

(b) A scheme plan of subdivision of land contiguous to that strip of land is subsequently submitted to the Council under the provisions of this part of this Act, -

then, notwithstanding the provisions of subsection (5) of this section, the Council may, as a condition of its approval of the scheme plan, require the owner to set aside as reserved for public purposes a strip of land contiguous to the strip of land previously set aside and of a width determined by the Council, being not more than the difference between the width of the strip of land previously set aside and 66 feet.

(1C) The strip of land required to be reserved pursuant to subsection (1B) of this section shall be so reserved only in respect of so much of the land in the scheme plan as abuts on the strip of land reserved, pursuant to subsection (1) of this section or the corresponding provisions of any other enactment on the earlier subdivision and adjoins any allotment having an area of less than 10 acres.

(1D) Where in the opinion of the Council it is in the public interest that a road or part of a road be dedicated within the area required to be set aside as reserved for public purposes pursuant to subsection (1) or subsection (1B) of this section, then, with the consent of the Minister of Lands, the dedication of that road or part of that road which lies within the area set aside may be accepted in satisfaction of and in substitution for the area or part of the area, as the case may be, that would otherwise be required to set aside under this section.]

(2) In any case where a strip of land is set aside as required by subsection (1) 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 as a condition of its approval of the scheme plan that the owner shall execute, or obtain the execution of, and register, a transfer to Her Majesty of the whole or a specified part of the land below the mean high-wager 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 Her Majesty, pursuant to this section shall be taken into account for the purposes of section 28 of this Act, except to such extent (if any) as the Council allows.

(4) The Minister of Lands may from time to time declare that section (1) 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 33 feet.

(5) Every decision of the Minister of Lands under this section shall be final.

Subs. (1A) was inserted by s. 22 of the Counties Amendment Act 1964.
Subs. (1B) – (1D) were inserted by s. 41 of the Counties Amendment Act 1968.

28. Reserves along seashore and banks of lakes, rivers, etc. –

(1) Section 29 of the Counties Amendment Act 1961 is hereby amended by repealing subsection (1A) (as inserted by section 22 of the Counties Amendment Act 1964), and substituting the following subsection:

"(1A) The strip of land required to be reserved pursuant to subsection (1) of this section along the bank of any river or stream shall, in any case where the river or stream has an average width of 3 metres or more but less than 5 metres, be so reserved only in respect of so much of the land in the scheme plan as abuts on the river or stream as aforesaid and adjoins any allotment having an area of less than 4 hectares."

(2) Section 29 of the Counties Amendment Act 1961 is hereby further amended by repealing subsection (1C) (as inserted by section 41 of the Counties Amendment Act 1968), and substituting the following subsection:

"(1C) The strip of land required to be reserved pursuant to subjection (1B) of this section shall, in any case where the river or stream has an average width of more than 3 metres but less than 5 metres, be so reserved only in respect of so much of the land in the scheme plan as abuts on the strip of land reserved, pursuant to subsection (1) of this section or the corresponding provisions of any other enactment, on the earlier subdivision and adjoins any allotment having an area of less than 4 hectares."

(3) The following enactments are hereby consequentially repealed:

(a) Section 22 of the Counties Amendment Act 1964:

(b) So much of the Third Schedule to the Counties Amendment Act 1972 as relates to subsections (1A) and (1C) of section 29 of the Counties Amendment Act 1961.

Appendix 13

Local Government Amendment Act 1978 - (inserting new sections in the Local Government Act 1974)

289. **Reserves along areas of water** – (1) On every scheme plan submitted to the council under this part of this Act, unless the council, with the consent of the Minister of Lands (now Minister of Conservation), considers it unnecessary to do so, there shall be set aside as local purpose reserves for esplanade purposes under the Reserves Act 1977 for the purpose of providing access to the sea, lake, river, or stream, as the case may be, and to protect the environment, within the land proposed to be subdivided, a strip of land not less than 20 metres in width along the mean high-water mark of the sea and of its bays, inlets, or creeks, and along the margin of every lake with an area in excess of 8 hectares, and along the banks of all rivers and streams which have an average width of not less than 3 metres (not being rivers or streams or parts of rivers or streams exempted from this subsection pursuant to subsection (7) of this section):

Provided that the council, with the consent of the Minister of Lands (now Minister of Conservation), may approve the reduction of the width of the strip of land to a width of not less than 3 metres if in its opinion the reduced width will be sufficient to give members of the public reasonable access to the sea, lake, river, or stream.

(2) Where –

(a) A strip of land less than 20 metres in width along the mean high-water mark of the sea or of any of its bays, inlets, or creeks, or along the margin of any lake, or along any bank of any river or stream has either –

(i) Been reserved for the purpose of specified in subsection (1) of this section , or for public purposes pursuant to section 29 91) of the Counties Amendment Act 1961 (as in force before the commencement of this Part of this Act); or

(ii) Been set aside or served for recreation purposes pursuant to any other enactment (whether passed before or after the commencement of this Part of this Act and whether or not in force at the commencement of this part of this Act); or

(iii) Been reserved from sale pursuant to section 58 of the Land Act 1948 or the corresponding provisions of any former Act; and

(b) A scheme plan of subdivision of land contiguous to that strip of land is subsequently submitted to the council under this part of this Act, -

then, notwithstanding that under subsection (1) of this section or under any former enactment the Minister of Lands (now Minister of Conservation) had consented to the setting aside of the strip of land of less than 20 metres in width, the council may, as a condition of its approval of the scheme plan, require the owner to set aside as reserved for the purpose specified in subsection (1) of this section a strip of land contiguous to the strip of land

previously set aside and of a width determined by the council, being not more than the difference between the width of the strip of land previously set aside and 20 metres.

(3) Nothing in subsection (1) or subsection (2) of this section shall require a strip of land to be set aside as reserved for the purposes specified in the said subsection (1) or subsection (2) as the case may be along the banks of any river or stream where that land adjoins any allotment having an area of 4 hectares or more and in the opinion of the council, that allotment is intended to be used, or will continue to be used, wholly or principally in a manner conforming with accepted farming or management practices, for agricultural or horticultural or silvicultural or pastoral purposes or the keeping of bees or poultry or other livestock.

(4) Where, in the opinion of the council, it is in the public interest that a road or part of a road be dedicated within the area required to be set aside as reserved for the purpose specified in subsection (1) of this section, then, with the consent of the Minister of Lands (now Minister of Conservation), the dedication of that road or part of that road which lies within the area set aside may be accepted in satisfaction of and in substitution for the area or part of the area, as the case may be, that would otherwise be required to be set aside under this section.

(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, as a condition of its approval of the scheme plan, that the owner shall execute, or obtain the execution of, and register, 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.

(6) No land set aside as a reserve or transferred to Her Majesty pursuant to this section shall be taken into account for the purposes of section 285 or section 286 of this Act, except to such extent (if any) as the council allows.

(7) The Minister of Lands (now Minister of Conservation) may from time to time on the application of the council declare that subsection (1) 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, or may on the application of the council revoke any such declaration, in whole or in part. In making his decision under this section, the Minister of Lands (now Minister of Conservation) shall have regard to the provisions of any proposed or operative district scheme for the locality in which the river or stream is situated.

(8) Every decision of the Minister of Lands (now Minister of Conservation) under this section shall be final.

(9) In this section a reference to bays, inlets, or creeks of the sea includes those that are artificial as well as those that are natural.

CF. 1961, No. 131, s.29; 1977, No. 134, s.4

290. **Compensation in respect of land along areas of water set aside as reserves** – (1) Where –

(a) Pursuant to subsection (1) or subsection (2) of section 289 of this Act a strip of land that –

(i) Is situated along the mean high-water mark of the sea or of any of its bays, inlets, or creeks or along the margin of any lake; and

(ii) Adjoins any allotment having an area of 4 hectares or more which, in the opinion of the Minister of Lands (now the Minister of Conservation), is to be retained by the subdividing owner for a period of not less than 5 years from the date of deposit of the survey plan and, in the opinion of that Minister, is to be used for that period for any of the purposes specified in subsection (3) of that section, -

has been set aside as reserved for the purpose specified in subsection (1) of that section; and

(b) No part of that allotment is zoned for residential or commercial or industrial purposes under any operative or proposed district scheme at the date of deposit of the survey plan, -

There shall be paid, as compensation, to the subdividing owner, or, if he is deceased, to his personal representative, out of money appropriated by Parliament, an amount equal to the value, as at the date of deposit of the survey plan, of the land set aside, the amount to be determined by a valuation made by the Valuer-General.

(2) If the subdividing owner, or, as the case may be, his personal representative, is dissatisfied with the amount of any valuation made for the purposes of subsection (1) of this section, he may, within 1 month after notice of the valuation has been given to him by the Valuer-General, object to that valuation by delivering or posting to the Valuer-General a written notice of objection stating shortly the grounds of his objection and the value at which he contends the land should be valued. Sections 20 to 23 of the Valuation of Land Act 1951, as far as they are applicable and with the necessary modifications, shall apply to the objection.

(3) Where –

(a) Any payment is made to the subdividing owner or his personal representative under subsection (1) of this section; and

(b) Within 5 years after the date of the deposit of the land survey plan the subdividing owner or, as the case may be, his personal representative or any successor in title of the subdividing owner subdivides the adjoining land or any part of it or transfers by way of sale or enters into an agreement to sell the adjoining land or any part of it, -

there shall be repayment to the Crown, by the subdividing owner or his personal representative or that successor in title, as the case may be, and charged against the land and recoverable as a debt, the amount of that payment to the extent that it has not already been repaid:

Provided that the Minister of Lands (now Minister of Conservation), whose decision shall be final, may, in his discretion, waive such a repayment or may direct that an amount less than the full amount shall be repaid.

(4) The right of the Crown to repayment under subsection (3) of this section shall be deemed to be an interest in the land for the purposes of section 137 of the Land Transfer Act 1952 (which relates to caveats against dealing with the land).

(5) Where pursuant to subsection (1) or subsection (2) of section 289 of this Act a strip of land has been set aside as reserved for the purpose specified in section 289 (1) of this Act along the mean high-water mark of the sea or any of its bays, inlets, or creeks, or along the margin of any lake in excess of 8 hectares and adjoining any allotment having an area of 4 hectares or more, there shall be paid to the subdividing owner or, if he is deceased,, his personal representative, out of money appropriated by Parliament, an amount equal to any additional survey costs incurred by the subdividing owner in determining the land to be set aside (such costs to be determined in accordance with the scale of fees of the New Zealand Institute of Surveyors which are current at the date of deposit of the survey plan).

Cf. 1961, No. 131, s.29 (5) – (9); 1977, No. 131, s.4

Reserves Amendment Act 1979 - Consequently amended s289 (above as follows)

(2) Section 289 of the Local Government Act 1974 (as enacted by section 2 of the Local Government Amendment Act 1978) is hereby amended –

(a) By inserting subsection (1), after the words “local purpose reserves”, the words “for esplanade purposes”:

By omitting from subsection (3) the words “for recreation purposes”, and substituting the words “for the purposes specified in the said subsection (1) or subsection (2), as the case may be,”

Appendix 14

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [229 Purposes of esplanade reserves and esplanade strips

[229 Purposes of esplanade reserves and esplanade strips

An esplanade reserve or an esplanade strip has one or more of the following purposes:

(a) To contribute to the protection of conservation values by, in particular,—

(i) Maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; 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.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124. The repealed s229 is listed below for reference.

"229 Meaning and purposes of 'esplanade reserve'—

"(1) In this Act the term 'esplanade reserve' means a reserve within the meaning of the Reserves Act 1977, which shall be either—

"(a) A local purpose reserve within the meaning of section 23 of that Act, if vested in the territorial authority under section 239; or

"(b) A reserve vested in the Crown under section 236.

"(2) The purposes of an esplanade reserve are—

"(a) To contribute to the protection of conservation values by, in particular—

"(i) Maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; 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

"(v) Mitigating natural hazards; and

"(b) To enable public access to or along the sea, a river, or a lake; and

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

"(3) Nothing in this section or section 236 shall prevent the change of classification or purpose of an esplanade reserve in accordance with the Reserves Act 1977 or the exercise of any other power under that Act."

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [230 Requirement for esplanade reserves or esplanade strips

[230 Requirement for esplanade reserves or esplanade strips

(1) For the purposes of sections 77, 229 to 237H, 405A, and clause 5 of Part 2 of the Schedule 2, the size of any allotment shall be determined before any esplanade reserve or esplanade strip is set aside or created, as the case may be.

(2) The provisions of sections 229 to 237H shall only apply where section 11(1)(a) applies to the subdivision.

(3) Except as provided by any rule in a district plan made under section 77(1), or a resource consent which waives, or reduces the width of, the esplanade reserve, where any allotment of less than 4 hectares is created when land is subdivided, an esplanade reserve 20 metres in width shall be set aside from that allotment along the mark of mean high water springs of the sea, and along the bank of any river or along the margin of any lake, as the case may be, and shall vest in accordance with section 231.

(4) For the purposes of subsection (3), a river means a river whose bed has an average width of 3 metres or more where the river flows through or adjoins an allotment; and a lake means a lake whose bed has an area of 8 hectares or more.

(5) If any rule made under section 77(2) so requires, but subject to any resource consent which waives, or reduces the width of, the esplanade reserve or esplanade strip, where any allotment of 4 hectares or more is created when land is subdivided, an esplanade reserve or esplanade strip shall be set aside or created from that allotment along the mark of mean high water springs of the sea and along the bank of any river and along the margin of any lake, and shall vest in accordance with section 231 or be created in accordance with section 232, as the case may be.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124. The repealed s230 is listed below for reference.

"230 Esplanade reserves to vest on subdivision—

"(1) A strip of land not less than 20 metres in width along the mark of mean high water springs of the sea, and along the bank of any river, and along the margin of any lake, as the case may be,—

"(a) Shall be set aside from any land being subdivided as an esplanade reserve; and
"(b) Shall vest in and be administered by the territorial authority.

"(2) Every survey plan submitted to the territorial authority under section 223 shall show the area of land to be so set aside.

"(3) This section is subject to sections 231 and 232."

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [231 Esplanade reserves to vest on subdivision

[231 Esplanade reserves to vest on subdivision

(1) An esplanade reserve required under section 230 or section 236—

(a) Shall be set aside as a local purpose reserve for esplanade purposes under the Reserves Act 1977; and

(b) Shall vest in and be administered by the territorial authority.

(2) Nothing in this Part shall prevent the change of classification or purpose of an esplanade reserve in accordance with the Reserves Act 1977 or the exercise of any other power under that Act.

(3) Every survey plan submitted to the territorial authority under section 223 shall show the area of land to be so set aside.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124. The repealed s231 is listed below for reference.
"231 Vesting where strip of land previously set aside or reserved—
"Where—
"(a) A strip of land along the mean high water mark or the mark of mean high water springs of the sea, or along the bank of any river, or along the margin of any lake, has either—
"(i) Been set aside as an esplanade reserve under this section or been reserved for the purpose specified in section 289 of the Local Government Act 1974, or for public purposes pursuant to section 29(1) of the Counties Amendment Act 1961 or section 11 of the Land Subdivision in Counties Act 1946; or
"(ii) Been set aside or reserved for recreation purposes pursuant to any other enactment (whether passed before or after the commencement of this Act and whether or not in force at the commencement of this Act); or

"(iii) Been reserved from sale or other disposition pursuant to section 24 of the Conservation Act 1987 or section 58 of the Land Act 1948 or the corresponding provisions of any former Act; and

"(b) A survey plan of land adjoining that strip of land is submitted to the territorial authority under section 223,—

then, notwithstanding that any strip of land of a kind referred to in paragraph (a) has been previously reserved or set aside, there shall be set aside on the survey plan as an esplanade reserve under section 230 a strip of land—

"(c) Adjoining the strip of land previously set aside; and

"(d) Of a width that is the difference between the width of the strip of land previously set aside and not less than 20 metres from the mark of mean high water springs of the sea, and along the bank of any river, and along the margin of any lake, as the case may be."

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [232 Creation of esplanade strips

[232 Creation of esplanade strips

(1) An esplanade strip of the width specified in a rule in a district plan made under section 77 may be created for any purpose specified in section 229 by the registration of an instrument between the territorial authority, and the subdividing owner, prepared in accordance with this section.

(2) Every such instrument shall—

(a) Be in accordance with the Schedule 10; and

(b) Be in the prescribed form; and

{ Editorial Note: Prescribed form is in SR 1991/170. }

(c) Be created in favour of the territorial authority; and

(d) Create an interest in land, and may be registered under the Land Transfer Act 1952; and

(e) When registered with the District Land Registrar, run with and bind the land that is subject to the instrument; and

(f) Bind every mortgagee or other person having an interest in the land, without that person's consent.

(3) Where an esplanade strip is created, that strip may be closed to public entry under section 237C.

(4) When deciding under section 220(1)(a) which matters shall be provided for in the instrument, the territorial authority shall consider—

(a) Which provisions in clauses 2, 3, and 7 of the Schedule 10 (if any) to modify (including the imposition of conditions) or to exclude from the instrument; and

(b) Any other matters that the territorial authority considers appropriate to include in the instrument.

(5) When deciding under subsection (4) which provisions (if any) to modify or exclude or what other matters to include, the territorial authority shall consider—

(a) Any relevant rules in the district plan; and

(b) The provisions and other matters included in any existing instrument for an esplanade strip, or easement for an access strip, in the vicinity; and

(c) The purpose or purposes of the strip, including the needs of potential users of the strip; and

(d) The use of the strip and adjoining land by the owner and occupier; and

(e) The use of the river, lake, or coastal marine area within or adjacent to the strip; and

(f) The management of any reserve in the vicinity.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124. The repealed s232 is listed below for reference.

"232 Width of esplanade reserve subject to district plan

"(1) Any requirement under this Part to set aside a strip of land as an esplanade reserve is subject to any rule included in a district plan under section 77 (which enables rules to be made providing for esplanade reserves to be of a width greater or less than 20 metres), and sections 230 and 231 shall be read accordingly.

"(2) No resource consent shall be granted to do anything that would otherwise contravene a rule included in a district plan under section 77."

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [233 Effect of change to boundary of esplanade strip

[233 Effect of change to boundary of esplanade strip

(1) Where, for any reason, the mark of any mean high water springs or the bank of any river or the margin of any lake alters, and the alteration affects an existing esplanade strip within an allotment, a new esplanade strip coinciding with such alteration shall be deemed to have been created simultaneously with each and every such alteration within the allotment.

(2) Any instrument creating any existing esplanade strip shall continue in existence and shall apply to a new esplanade strip created under subsection (1) without alteration, except as to location of the strip.

(3) Every esplanade strip created by subsection (1) shall be of such dimensions and be situated and subject to the same conditions as if it had been created by an instrument continued

under subsection (2) and shall extinguish in whole or in part, as the case may require, the existing esplanade strip which would have continued but for the alterations referred to in subsection (1).

(4) Subject to this section, the provisions of this Act shall apply to every esplanade strip created by subsection (1).

(5) Any person having an interest in land affected by the new esplanade strip created under subsection (1) shall be bound by the instrument applying to that strip.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124. The repealed s233 is listed below for reference.

"233 Approval of survey plans where esplanade reserve required—

"(1) Subject to subsection (2), the territorial authority shall not approve a survey plan unless any esplanade reserve required under this Part is shown on the survey plan.

"(2) Where—

"(a) An esplanade reserve is required under this Part in respect of a subdivision which is to be effected by the grant of a cross lease or company lease or by the deposit of a unit plan; and

"(b) It is not practical to set aside the esplanade reserve on the survey plan submitted for approval under section 223 (in this section referred to as the 'primary survey plan'),—

the territorial authority shall not approve the primary survey plan until a separate survey plan showing the esplanade reserve to be set aside has been prepared and submitted to the territorial authority for approval under this section.

"(3) Where the territorial authority approves a separate survey plan under subsection (2),—

"(a) A memorandum to that effect shall be endorsed on the primary survey plan and the separate survey plan; and

"(b) A District Land Registrar or a Registrar of Deeds shall not deposit the primary survey plan and (in respect of a subdivision by the Crown) the District Land Registrar shall not issue a certificate of title for any separate allotment on the primary survey plan approved by the Chief Surveyor for the purposes of section 228, unless the separate survey plan on which the esplanade reserve is set aside is deposited prior to, or at the same time as, the primary survey plan.

"(4) Subject to this section, nothing in section 11 or this Part applies to a separate survey plan approved by a territorial authority under this section."

[234 Variation or cancellation of esplanade strips

(1) The registered proprietor of any land subject to an esplanade strip may apply to the territorial authority to vary or cancel the instrument creating the strip.

(2) The application shall include—
- (a) A description of the strip and its location; and
- (b) An assessment of the effects of varying or cancelling the strip.

(3) The territorial authority may at any time initiate a proposal to vary or cancel the instrument creating an esplanade strip by preparing a statement covering the matters specified in subsection (2); and references to an application in this section shall include a statement made under this subsection.

(4) Upon receipt of an application under subsection (1) by the territorial authority, or after the preparation of a statement by the territorial authority under subsection (3), the provisions of sections 127 to 132 shall apply as appropriate, with all necessary modifications.

(5) The territorial authority, when considering an application to vary or cancel any instrument creating an esplanade strip shall have regard to—
- (a) Those matters set out in section 104(1), with all necessary modifications; and
- (b) The purpose or purposes, as set out in section 229, for which the strip was created; and
- (c) Any change in circumstances which has made the strip or any of the conditions in the instrument creating the strip inappropriate or unnecessary.

(6) After considering the application for variation or cancellation of an instrument creating an esplanade strip, the territorial authority—
- (a) May grant the application, with or without modifications; or
- (b) May decline the application.

(7) When all the appeals (if any) are finally determined, the territorial authority shall lodge for registration with the District Land Registrar a certificate, signed by the principal administrative officer or other authorised officer of the territorial authority, specifying the variations to the instrument or that the instrument is cancelled, as the case may be.

(8) The District Land Registrar shall make an appropriate entry in the register and on the instrument noting that the instrument has been varied or cancelled, and the instrument shall take effect as so varied or cease to have any effect, as the case may be.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124. The repealed s234 is listed below for reference.

"234 Relationship with conditions imposed under section 220—

"No land set aside as an esplanade reserve, or transferred to the Crown pursuant to section 235, shall be taken into account for the purposes of a condition imposed under section 220(1)(a)."

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [235 Creation of esplanade strips by agreement

[235 Creation of esplanade strips by agreement

(1) An esplanade strip may at any time be created for any of the purposes specified in section 229 by agreement between the registered proprietor of any land and the local authority, and the provisions of sections 229[, 232, 234, 237(2), and 237C] shall apply, with all necessary modifications.

(2) No instrument for an esplanade strip by agreement may be registered with the District Land Registrar unless every person having a registered interest in the land has endorsed his or her consent on the instrument.]

Status Compendium

Hist. s235(1): Words ", 232, 234, 237(2), and 237C" substituted for omitted words "to 234 and sections 236 to 237D" on 17 December 1997 by 1997 No 104, s44.

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124. The repealed s235 is listed below for reference.

"235 Vesting of ownership of land below mean high water springs or bed of lake or river in Crown—

"(1) Where—

"(a) A survey plan is submitted to a territorial authority in accordance with section 223; and

"(b) Any land below the mean high water springs of the sea, or any part of the bed of a river or lake, is vested in the owner of the land to which the survey plan relates; and

"(c) The Minister of Conservation does not waive the vesting under this section,—

the survey plan shall show as vesting in the Crown such part of the land as is below the mean high water springs of the sea, or as forms part of the bed of that river or lake, as the case may be.

"(2) The territorial authority concerned shall not approve a survey plan unless any part of the land required to vest in the Crown under subsection (1) is shown on the survey plan."

[236 Where land previously set aside or reserved

Where—

(a) Land along the mean high water mark or the mark of mean high water springs of the sea, or along the bank of any river, or along the margin of any lake, has—

(i) Been set aside as an esplanade reserve under this Part, or has been reserved for the purpose specified in section 289 of the Local Government Act 1974, or for public purposes pursuant to section 29(1) of the Counties Amendment Act 1961 or section 11 of the Land Subdivision in Counties Act 1946; or

(ii) Been set aside or reserved for public recreation purposes pursuant to any other enactment (whether passed before or after the commencement of this Act and whether or not in force at the commencement of this Act); or

(iii) Been reserved from sale or other disposition pursuant to section 24 of the Conservation Act 1987, or section 58 of the Land Act 1948, or the corresponding provisions of any former Act; and

(b) A survey plan of land adjoining that land previously set aside or reserved is submitted to the territorial authority under section 223—

then, notwithstanding that any land of the kind referred to in paragraph (a) has been previously reserved or set aside but subject to any rule in a district plan or any resource consent, there may, as a condition of consent under section [220(1)(aa)], be set aside on the survey plan an esplanade reserve adjoining the land previously set aside or reserved, which shall—

(c) Be of a width that is the difference between the width of the land previously set aside or reserved and—

(i) The width required by a rule in a district plan under section 77 for an esplanade reserve, if any, where any allotment 4 hectares or more is created when land is subdivided; or

(ii) The width required by a rule in a district plan under section 77 for an esplanade reserve, if any, where any allotment less than 4 hectares is created when land is subdivided; or

(iii) Where any allotment less than 4 hectares is created when land is subdivided, and there is no rule in a district plan under section 77, then 20 metres as required under section 230.]

Status Compendium

Hist. s236: Expression "220(1)(aa)" substituted for omitted expression "220(1)(ab)" on 17 December 1997 by 1997 No 104, s45.

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124. The repealed s236 is listed below for reference.

"236 Transfer of esplanade reserve to the Crown—

"Notwithstanding the provisions of the Reserves Act 1977, the Minister of Conservation may, with the prior written agreement of the territorial authority, declare by notice in the Gazette, that an esplanade reserve, or any part of an esplanade reserve,—

"(a) Shall cease to be vested in and administered by the territorial authority but instead shall vest in the Crown; and

"(b) Shall have such classification under the Reserves Act 1977 as may be specified in the Gazette notice, or shall be included in any existing reserve under that Act,—

and, subject to the provisions of the Reserves Act 1977, the reserve shall be administered by the Minister of Conservation in accordance with that classification."

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [237 Approval of survey plans where esplanade reserve or esplanade strips required

[237 Approval of survey plans where esplanade reserve or esplanade strips required

(1) Subject to subsection (3), the territorial authority shall not approve a survey plan unless any esplanade reserve or esplanade strip required under this Part is shown on the survey plan.

(2) Notwithstanding anything in the Land Transfer Act 1952, an esplanade strip shall not be required to be surveyed, but where an esplanade strip is shown on the survey plan, it shall be clearly identified in such manner as the Chief Surveyor considers appropriate.

(3) Where—

(a) An esplanade reserve or esplanade strip is required under this Part in respect of a subdivision which is to be effected by the grant of a cross lease or company lease or by the deposit of a unit plan; and

(b) It is not practical to show the esplanade reserve or esplanade strip on the survey plan submitted for approval under section 223 (in this section referred to as the "primary survey plan")—

the territorial authority, after consultation with the District Land Registrar, shall not approve the primary survey plan until a separate survey plan showing the esplanade reserve or esplanade strip has been prepared and submitted to the territorial authority for approval under this section.

(4) Where the territorial authority approves a separate survey plan under subsection (3)—

(a) A memorandum to that effect shall be endorsed on the primary survey plan and the separate survey plan; and

(b) A District Land Registrar or a Registrar of Deeds shall not deposit the primary survey plan and (in respect of a subdivision by the Crown) the District Land Registrar shall not issue a certificate of title for any separate allotment on the primary survey plan approved by the Chief Surveyor for the purposes of section 228, unless the separate survey plan on which the esplanade reserve or esplanade strip is shown is deposited prior to, or at the same time as, the primary survey plan.

(5) Subject to this section, nothing in section 11 or this Part applies to a separate survey plan approved by a territorial authority under this section.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124. The repealed s237 is listed below for reference.

"237 Compensation for taking of esplanade reserve—

"(1) Subject to subsection (2), where an esplanade reserve of a width greater than 20 metres is required by a district plan to be set aside on a survey plan, the territorial authority shall pay compensation to the subdividing owner (or the owner's personal representative).

"(2) The amount of compensation payable under subsection (1) shall be equal to the value of the land described in paragraph (a) less the value, as at the date of deposit of the survey plan, of the land described in paragraph (b):

"(a) The total area of that part of the esplanade reserve required to be set aside on a survey plan which is more than 20 metres from the mark of mean high water springs of the sea, or along the bank of any river, or along the margin of any lake, as the case may be:

"(b) Any area of land within 20 metres from the mark of mean high water springs of the sea, or along the bank of any river, or along the margin of any lake, as the case may be, which is not required to be set aside as esplanade reserve on the survey plan by reason of a rule included in a district plan under section 77.

"(3) In the event that the territorial authority and the subdividing owner (or the owner's personal representative) cannot agree as to the amount of compensation payable under subsection (1), the amount shall be determined by the Valuer-General.

"(4) The Valuer-General shall give a copy of a valuation made under subsection (3) to the subdividing owner who may, if dissatisfied, within one month of receipt of the valuation from the Valuer-General, object to the valuation. Any such objection shall be in writing, shall be addressed to the Valuer-General, and shall state the grounds of objection.

"(5) Sections 20 and 22 of the Valuation of Land Act 1951 shall, so far as they are applicable and with the necessary modifications, apply to an objection made under sub-section (4) as if that objection were an objection to an altered valuation under that Act."

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [237A Vesting of ownership of land in coastal marine area or bed of lake or river in the Crown or territorial authority

[237A Vesting of ownership of land in coastal marine area or bed of lake or river in the Crown or territorial authority

(1) Where a survey plan is submitted to a territorial authority in accordance with section 223, and any part of the allotment being subdivided is the bed of a river or lake or is within the coastal marine area, the survey plan shall—

(a) Show as vesting in the territorial authority—

(i) Such part of the allotment as forms part of the bed of a river or lake and adjoins an esplanade reserve shown as vesting in the territorial authority; or

(ii) Such part of the allotment as forms part of the bed of a river or lake and is required to be so vested as a condition of a resource consent:

(b) Show as vesting in the Crown—

(i) Such part of the allotment in the coastal marine area as adjoins an esplanade { sic ? esplanade } reserve shown as vesting in the territorial authority; or

(ii) Such part of the allotment in the coastal marine area as is required to be so vested as a condition of a resource consent—

if such vesting of land in the Crown has the written agreement of the Minister of Conservation.

(2) Any requirement to vest the bed under subsection (1)(a)(i) or subsection (1)(b)(i) shall be subject to any rule in a district plan or any resource consent which provides otherwise.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124.

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [237B Access strips

[237B Access strips

(1) A local authority may agree with the registered proprietor of any land to acquire an easement over the land, and may agree upon the conditions upon which such an easement may be enjoyed.

(2) Any such easement shall—

(a) Be executed by the local authority and the registered proprietor; and

(b) Be in the prescribed form; and

{ Editorial Note: Prescribed form is in SR 1991/170. }

(c) Contain the relevant provisions in accordance with the Schedule 10.

(3) When deciding which matters shall be provided for in the easement, the parties shall consider—

(a) Which provisions in clauses 2, 3, and 7 of the Schedule 10 (if any) to modify (including by the imposition of conditions) or to exclude from the easement; and

(b) Any other matters that the local authority and registered proprietor consider appropriate to include in the easement.

(4) When deciding under subsection (3) which provisions (if any) to modify or exclude or what other matters to include, the parties shall consider—

(a) Any relevant rules in the district plan; and

(b) The provisions and other matters included in any existing instrument for an esplanade strip, or easement for an access strip, in the vicinity; and

(c) The purpose of the strip, including the needs of potential users of the strip; and

(d) The use of the strip and adjoining land by the owner and occupier; and

(e) Where appropriate, the use of the river, lake, or coastal marine area within or adjacent to the access strip; and

(f) The management of any reserve in the vicinity.

(5) Any such easement shall take effect when registered at the office of the District Land Registrar.

(6) An access strip may be closed to public entry under section 237C.

(7) No easement for an access strip may be registered with the District Land Registrar unless every person having a registered interest in the land has endorsed his or her consent on the easement.

(8) The registered proprietor and the local authority may, by agreement, vary or cancel the easement if the matters in subsection (4) and any change in circumstances have been taken into account; and in any such case the provisions of section 234(7) and (8) shall apply, with all necessary modifications.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124.

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [237C Closure of strips to public

[237C Closure of strips to public

(1) An esplanade strip or access strip may be closed to the public for the times and periods specified in the instrument or easement under the Schedule 10, or by the local authority during periods of emergency or public risk likely to cause loss of life, injury, or serious damage to property.

(2) The local authority shall ensure, where practicable, that any closure specified in the instrument or easement, or any closure for safety or emergency reasons, is adequately notified (including notification that it is an offence to enter the strip during the period of closure) to the public by signs erected at all entry points to the strip, unless the instrument or easement provides that another person is responsible for such notification.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124.

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [237D Transfer to the Crown or regional council

[237D Transfers to the Crown or regional council

(1) Notwithstanding the provisions of the Reserves Act 1977, the Minister of Conservation or a regional council may, with the prior written agreement of the territorial authority, declare by notice in the Gazette that an esplanade reserve, or any part of an esplanade reserve,—

(a) Shall cease to be vested in and administered by the territorial authority but instead shall vest in the Crown or the regional council; and

(b) Shall have such classification under the Reserves Act 1977 as may be specified in the notice, or shall be included in any existing reserve under that Act,—

and, subject to the provisions of the Reserves Act 1977, the reserve shall be administered by the Minister of Conservation or the regional council, as the case may be, in accordance with that classification.

(2) The Minister of Conservation or a regional council may, with the prior written agreement of the territorial authority, declare by notice in the Gazette that the bed of any river or lake shall cease to be vested in the territorial authority but instead shall vest in the Crown or the regional council, as the case may be.

(3) The notice shall be registered in the office of the District Land Registrar.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124.

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [237E Compensation for taking of esplanade reserves or strips on allotments of less than 4 hectares

[237E Compensation for taking of esplanade reserves or strips on allotments of less than 4 hectares

(1) Where an allotment of less than 4 hectares is created when land is subdivided, no compensation for esplanade reserves or esplanade strips shall be payable for any area of land within 20 metres from the mark of mean high water springs of the sea or from the bank of any river or from the margin of any lake, as the case may be.

(2) Where an esplanade reserve or esplanade strip of a width greater than 20 metres is required to be set aside on an allotment of less than 4 hectares created when land is subdivided, the territorial authority shall pay compensation for the area of the esplanade reserve or esplanade strip above 20 metres, to the registered proprietor of that allotment, unless the registered proprietor agrees otherwise.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124.

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [237F Compensation for taking of esplanade reserves or strips on allotments of 4 hectares or more

[237F Compensation for taking of esplanade reserves or strips on allotments of 4 hectares or more

Where any esplanade reserve or esplanade strip of any width is required to be set aside or created on an allotment of 4 hectares or more created when land is subdivided, the territorial authority shall pay to the registered proprietor of that allotment compensation for any esplanade reserve or any interest in land taken for any esplanade strip, unless the registered proprietor agrees otherwise.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124.

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / [237G Compensation for taking of land below mean high water springs or of bed of lake or river

[237G Compensation for taking of land below mean high water springs or of bed of lake or river

Where—

(a) Land is vested in the Crown or a territorial authority in accordance with section 237A; and

(b) The land vested under section 237A adjoins, or would adjoin if it were not for an esplanade reserve, any allotment of 4 hectares or more created when land is subdivided,—

the Crown or territorial authority, as the case may be, shall pay compensation to the registered proprietor of that land, unless the registered proprietor agrees otherwise.]

Status Compendium

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124.

[237H Valuation

(1) If the territorial authority or Crown, as the case may be, and the registered proprietor cannot agree as to the amount of compensation, including any additional survey costs, payable under section 237E, section 237F, or section 237G, the amount shall be determined by [a registered valuer agreed on by the parties (or, failing agreement, nominated by the President of the New Zealand Institute of Valuers)], who shall provide a copy of the determination to all parties.

[(2) The territorial authority or Crown, as the case may be, or the registered proprietor who is dissatisfied with the determination under subsection (1) may, within 20 working days after service of the determination, object to the determination to the registered valuer in writing, stating the grounds of objection.

(3) Sections 34, 35, 36, and 38 of the Rating Valuations Act 1998 (and any regulations made under that Act relating to reviews and objections), as far as they are applicable and with all necessary modifications, are to apply to the objection as if—

(a) The registered valuer had been appointed by a territorial authority to review the objection; and

(b) The review had been made under section 34 of that Act; and

(c) The references to a territorial authority in sections 34(4), 35, and 36 of that Act were references to the registered valuer.]

(4) For the purposes of this section and of sections 237E to 237G, the amount of compensation shall be equal to—

(a) In the case of an esplanade reserve, the value of the land set aside:

(b) In the case of an esplanade strip, the value of the interest in land created—

and any additional survey costs incurred by reason of the esplanade reserve or esplanade strip, as the case may be, as at the date of the deposit of the survey plan.]

Status Compendium

Hist. s237H(1): Words "a registered valuer . . . Institute of Valuers)" substituted for omitted words "the Valuer-General" on 1 July 1998 by 1998 No 69, s54(1).

Hist. s237H(2) & (3): Repealed and substituted on 1 July 1998 by 1998 No 69, s54(1). The repealed s237H(2) & (3) are listed below for reference.

"(2) The territorial authority or the registered proprietor may, if dissatisfied with the determination, within 20 working days of its receipt from the Valuer-General, object to the Valuer-General, in writing, stating the grounds of objection to the determination.

"(3) Sections 20 and 22 of the Valuation of Land Act 1951 shall, so far as they are applicable and with the necessary modifications, apply to an objection made under subsection (3) as if the objection were an objection to an altered valuation under that Act."

Hist. s229 - s237H: Substituted for repealed s229 - s237 on 7 July 1993 by 1993 No 65, s124.

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Vesting of roads and reserves / 238 Vesting of Roads

Vesting of roads and reserves

238 Vesting of roads

(1) When a District Land Registrar or Registrar of Deeds deposits a survey plan, or a Chief Surveyor approves a survey plan to which section 228 applies, the land shown on the survey plan as road to be vested in a local authority or the Crown vests, free from [all interests in land including any] encumbrances (without the necessity of any instrument of release or discharge or otherwise),—

(a) In the case of a regional road, in the territorial authority or regional council, as the case may be:

(b) In the case of a Government road declared as such under any Act, in the Crown:

(c) In the case of a state highway, in the Crown or the territorial authority, as the case may be:

(d) In the case of any other road, in the territorial authority.

(2) This section has effect notwithstanding section 168 of the Land Transfer Act 1952 (which relates to the dedication of roads for public purposes).

Status Compendium

Hist. s238(1): Words "all interests in land including any" inserted on 7 July 1993 by 1993 No 65, s125.

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Vesting of roads and reserves / 239 Vesting of reserves or other land

239 Vesting of reserves or other land

(1) When a District Land Registrar or a Registrar of Deeds deposits a survey plan, or a Chief Surveyor approves a survey plan to which section 228 applies,—

(a) Any land shown on the survey plan as reserve to be vested in the territorial authority or the Crown, vests in the territorial authority or the Crown, as the case may be, free from [all interests in land, including any] encumbrances (without the necessity of any instrument of release or discharge or otherwise) for the purposes shown on the survey plan, and subject to the Reserves Act 1977; and

(b) Any land shown on the survey plan as land to be vested in the territorial authority or in the Crown in lieu of reserves, shall vest in the territorial authority or in the Crown, as the case may be, free from [all interests in land, including any] encumbrances (without the necessity of an instrument of release or discharge or otherwise)[; and]

[(c) Any land in the coastal marine area or any part of the bed of a river or lake, shown on the survey plan as land to be vested in the territorial authority or the Crown, shall vest in the territorial authority or the Crown, as the case may be, free from all interests in land, including any encumbrances (without the necessity of an instrument of release or discharge or otherwise).]

[(2) Notwithstanding subsection (1), the land may be vested subject to any specified interest which the territorial authority has certified, on the survey plan, shall remain with the land.

[(3) Any land vested in the Crown shall, unless this Act provides otherwise,—

(a) In the case of land to which section 9A of the Foreshore and Seabed Endowment Revesting Act 1991 applies, be vested in the Crown subject to that section:

(b) In any other case, be vested under the Land Act 1948.]]

Status Compendium

Hist. s239(1)(a): Words “all interests in land, including any” inserted on 7 July 1993 by 1993 No 65, s126(1)(a).

Hist. s239(1)(b): Words “all interests in land, including any” inserted on 7 July 1993 by 1993 No 65, s126(1)(b).

Hist. s239(1)(b): Word “; and” added on 7 July 1993 by 1993 No 65, s126(1)(c).

Hist. s239(1)(c): Added on 7 July 1993 by 1993 No 65, s126(2).

Hist. s239(3): Repealed and substituted on 25 November 1994 by 1994 No 113, s4. The repealed s239(3) is listed below for reference.

“(3) Any land vested in the Crown shall, unless this Act provides otherwise, be vested under the Land Act 1948.]”

Hist. s239(2) & (3): Added on 7 July 1993 by 1993 No 65, s126(3).

Resource Management Act 1991 / Part 10 – Subdivision and reclamations / Esplanade reserves / 235 Creation of esplanade strips by agreement

[225 Creation of esplanade strips by agreement

(1) An esplanade strip may at any time be created for any of the purposes specified in section 229 by agreement between the registered proprietor of any land and the local authority, and the provisions of sections 229 [, 232, 234, 237(2), and 237C] shall apply, with all necessary modifications.

{ Editorial Note: s235(1): Expression "233," is to be inserted after expression "232," on 1 August 2003 by 2003 No 23, s74. }

(2) No instrument for an esplanade strip by agreement may be registered with the District Land Registrar unless every person having a registered interest in the land has endorsed his or her consent on the instrument.]

Status Compendium

Hist. s235(1): Words ", 232, 234, 237(2), and 237C" substituted for omitted words "to 234 and sections 236 to 237D" on 17 December 1997 by 1997 No 104(5), s44.

Hist. s229 -s237H: Substituted for repealed s229 -8237 on 7 July 1993 by 1993 No 65(6), s124. The repealed s235 is listed below for reference.

"235 Vesting of ownership of land below mean high water springs or bed of lake or river in Crown- "(1) Where-

"(a) A survey plan is submitted to a territorial authority in accordance with section 223; and

"(b) Any land below the mean high water springs of the sea, or any part of the bed of a river or lake, is vested in the owner of the land to which the survey plan relates; and "(c) The Minister of Conservation does not waive the vesting under this section - the survey plan shall show as vesting in the Crown such part of the land as is below the mean high water springs of the sea, or as forms part of the bed of that river or lake, as the case may be.

"(2) The territorial authority concerned shall not approve a survey plan unless any part of the land required to vest in the Crown under subsection (1) is shown on the survey plan."

Resource Management Act 1991 / Resource Management Amendment Act 2003 / Part 1-Amendments to principal Act / Subpart 7-Coastal tendering /59 Application of Order in Council

59 Application of Order in Council

Substituted s153(b)(i) & (ii) of principal Act.

Status Compendium

Resource Management Act 1991 / Resource Management Amendment Act 2003/ Part 1-Amendments to principal Act / Subpart 9-Subdivision and reclamations /74 Creation of esplanade strips by agreement

74 Creation of esplanade strips by agreement

Inserted expression into s235(1) of principal Act

Status Compendium

Appendix 15

Extract from Introduction to the Native Land Act, 1909, by Sir John Salmond

NOTES ON THE HISTORY OF NATIVE-LAND LEGISLATION

TRANSFORMATION OF CUSTOMARY INTO FREEHOLD LAND

The customary Native title to the land of New Zealand has now for the most part been extinguished, and this has been effected in two chief ways:-

(1) By the voluntary cession to the Crown of lands purchased from the Native customary owners. Such a cession extinguishes the Native title, and leaves the land vested absolutely in the Crown as ordinary Crown lands, free to be disposed of by lease or Crown grant in accordance with the Land Acts.

(2) By the operation of the Native Land Court in ascertaining the title to customary land, whereupon a Crown grant or a certificate of title under the Land Transfer Act is issued to the Native owners. The land so dealt with, though it continues to be owned by the Native proprietors, ceases to be held under the Native title, and becomes freehold land held under English tenure in fee-simple from the Crown.

The earlier Native Land Acts are devoted chiefly to this process of ascertaining Native customary title and transforming it into freehold title. The Native Land Court was established in 1862 by the Native Lands Act of that year. This Court was empowered to inquire into the title to the customary lands of Natives, and to issue to the tribe, community, or individuals found to be entitled a certificate of title, which was to be conclusive proof of ownership. If any such certificate of title is issued to not more than twenty persons, it may be sealed with the Public Seal of the Colony, and shall then operate as a Crown grant, so as to transform that customary land into freehold land and extinguish the Native title.

In 1865 this Act was repealed in favour of the Native Lands Act, 1865. By this Act certificates of title are not to be issued by the Native Land Court to more than ten persons, and on the issue of such a certificate the Governor may seal a Crown grant in favour of the Natives entitled.

By the Native Land Act, 1873, a "memorial of ownership" was substituted for a certificate of title, presumably to avoid a possible confusion with certificates of title under the Land Transfer Act, 1870. By the Native Land Court Act, 1880, however, the older term "certificate of title" was restored.

In 1886 the Native Equitable Owners Act was passed, to enable the Native Land Court to make inquiries as to whether the persons named as owners in former certificates of title and memorials of ownership were entitled beneficially or were merely trustees for a larger number of Native

owners, and to include in the title the persons so found to be entitled. The limitation imposed by the earlier Acts on the number of names that could be inserted in a certificate of title had led to the practice of inserting a small number of nominal owners on behalf of the rest, instead of the full number beneficially entitled. The jurisdiction conferred by this Act upon the Native Land Court in 1886 has not even yet been completely exercised.

By the Native Land Court Act, 1886, it is provided that, instead of issuing a certificate of title or memorial of ownership, the Native Land Court shall simply make an order determining the title, and on this order being sent to the Minister of Lands a certificate of title under the Land Transfer Act should be issued to the Natives so declared to be entitled. The result of this change is to abolish the intermediate class of title which had existed under the earlier Acts - namely, a title which was no longer purely customary (because it had been ascertained by the Court and an instrument of title was held in respect of it) and, nevertheless, had not become freehold because no Crown grant had been issued in respect of it. Under this Act the title passed at once from customary to freehold by the immediate registration of the owners as proprietors under the Land Transfer Act.

By the Native Land Court Act, 1894, the same principle was maintained, and in addition it was provided that all land which at the passing of that Act was held under certificate of title or memorial of ownership issued by the Court should forthwith on the passing of that Act become subject to the Land Transfer .Act, and that the owners should acquire in consequence an estate in fee-simple. That is to say, in 1894 all customary land, the title to which had already been ascertained by the Court, was transformed automatically into freehold land subject to the Land Transfer Act.

Since 1894 no material alteration has been made in the process of ascertaining customary title and transforming it into freehold, save that by the Maori Lands Administration Act, 1900, the powers of the Native Land Court in this behalf were vested concurrently in the Maori Land Boards.

ALIENATION OF NATIVE LANDS

In considering the history of the law as to the alienation of Native land it is necessary to distinguish between three classes of land-viz., (1) Customary land the title to which has not been ascertained by the

Native Land Court; (2) customary land the title to which has been so ascertained; and (3) freehold land.

1. As to the first of these kinds, alienation is and always has been absolutely prohibited except in favour of the Crown. By the Treaty of Waitangi the exclusive right to purchase such lands was reserved to the Crown. By the Native Land Purchase Ordinance, 1846, it was made a criminal offence for a European to purchase such land or to be found in occupation of it. By section 73 of the Constitution Act, in 1852, the same prohibition was repeated; so also in section 75 of the Native Lands Act, 1865, section 87 of the Native Land Act, 1873, and section 117 of the Native Land Court Act, 1894.

2. As to the second class of Native lands-viz., customary land of which the title has 'been ascertained-special statutory powers of alienation have been from time to time conferred upon the Native owners. By the Native Lands Act, 1862, section 17, it was provided that any person holding a certificate of title issued by the Native Land Court could freely alienate the land by way of sale, lease, or exchange, and any such alienation was given effect to by the issue of a Crown grant or other instrument of title by the Crown. So also in the Native Lands Act, 1865, section 47, save that certain formalities of execution are required. So also in the Native Land Act, 1873, sections 48 and 49. The Native Land Act Amendment Act, 1878 (No.2), section 4, prohibited alienation by way of mortgage. By the Native Land Court Act, 1880, the Court, in issuing certificates of title, was empowered to impose such restrictions on alienation as were thought desirable. By the Native Land Laws Amendment Act, 1883, all negotiations for the alienation of Native land were prohibited for forty days after the ascertainment of title by the Native Land Court. By the Native Land Administration Act, 1886, all alienation was absolutely prohibited; but this Act. was repealed in 1888~ By the Native Land Court Act, 1894, this class of land was abolished by being brought automatically under the provisions of the Land Transfer Act, and so transformed into freehold.

3. Alienation of freehold land: Originally a Native holding land by freehold title had exactly the same powers of alienation as a European. By a long and very complicated course of legislation, however, this liberty has been restricted, the restrictions varying greatly in degree and nature at different times, and occasionally amounting to a general prohibition.

   By the Native Lands Act, 1862, the Governor was empowered, on the ascertainment of title, to impose restrictions on the alienation of any of the land so Crown-granted. By the Native Lands Act, 1865, the Court, in issuing a certificate of title, might recommend restrictions on alienation, and the restrictions so recommended were embodied in any Crown grant issued for that land. By the Native Lands Act, 1867, Native reserves were made inalienable by sale or mortgage, or by lease for more than twenty-one years, without the consent of the Governor.

   In 1870 the first Native Lands Frauds Prevention Act was passed. This invalidated all alienations of Native land if (a) contrary to equity and good conscience; or (b) made in consideration of the supply of liquor, arms, or ammunition; or (c) such that sufficient land was not left for the support of the Native. Trust Commissioners were appointed, and no instrument of alienation was to be valid unless endorsed by a Commissioner with a certificate that the alienation was in accordance with this Act.

   By the Native Land Act, 1873, Native reserves were to be set apart and to be inalienable without the consent of the Governor. By the same Act every instrument of alienation had to be explained to the Native by an interpreter, and to have endorsed a statement of its contents in the Maori language.

   The Native Lands Frauds Prevention Act, 1881, repealed the Act of 1870, but re-enacted it with minor modifications. This Act remained in force until the passing of the Native Land Court Act, 1894.

By the short-lived Native Land Administration Act, 1886, the alienation of land by the Native owners was absolutely prohibited. Commissioners were appointed, who, with the consent of a committee of the Native owners, had power to dispose of the land under the provisions of the Land Act, 1885, in the same manner as if it was Crown land.

This Act was repealed by the Native Land Act, 1888, section 4 of which provided that "subject to the provisions of the Native Lands Frauds Prevention Act, 1881, and of the Native Lands Frauds Prevention Act 1881 Amendment Act, 1888, Natives may alienate and dispose of land or of any share or interest therein as they think fit." By the same Act the Governor in Council was empowered, on the application of a majority of the Native owners, to remove any restriction contained in any Crown grant or other instrument of title.

Until the passing of the Native Land Court Act, 1894, therefore, the law as to the alienation of freehold land held by Natives was as follows:-

(1) Certain specific lands were subject to restrictions imposed by the Crown grants under which they were held, but these restrictions could be removed by the Governor in Council on the application of the owners.
(2) Certain lands were set apart as Native reserves, subject to special restrictions on alienation.
(3) All other freehold land was freely alienable, subject only to the approval of the Trust Commissioners under the Native Lands Frauds Prevention Act, 1881.

By the Native Land Court Act, 1894, the following alterations were made:-

(1) Power to remove restrictions imposed since 30th August, 1888, was conferred upon the Court, while the Governor was empowered, on the recommendation of the Court, to remove restrictions imposed prior to that date, (Section 52).
(2) The power of confirming alienations was taken away from the Trust Commissioners under the Native Lands Frauds Prevention Act, 1881, and conferred upon the Native Land Court. The last-mentioned Act was repealed, but the provisions contained in it as to the conditions to be fulfilled before confirmation can be obtained are substantially re-enacted.
(3) By section 117 the alienation of land owned by Natives is absolutely prohibited except in the following cases:-
    (a) Land in the South Island may be alienated by way of lease.
    (b) Land may be alienated to the Crown.
    (c) Land acquired by a Native "by way of purchase, gift, or testamentary disposition from any person other than the Crown, or by purchase from the Crown" is freely alienable.
(4) Instead of alienation by the individual Native owners, the Act provides for alienation by an incorporated body of owners, and also for alienation by the Land Board in the same manner as Crown lands, with the consent of a majority of the owners.

Within a year after the passing of the Native Land Court, Act, 1894, section 117 was amended by making further important exceptions to the prohibition of alienation. Sections 3 and 4 of the

Native Land Laws Amendment Act, 1895, allow alienation (subject only to confirmation by the Court) in the following cases:-

(1) Land situated in a borough or town district:
(2) Blocks not exceeding 500 acres, the title to which was ascertained before the passing of this Act:
(3) Any land exempted from section 117 by the Governor.

By the same Act the principle was for the first time adopted that a purchaser or lessee of Native land must make a declaration that he does not already hold more than a certain area of land.

The Maori Lands Administration Act, 1900, established Maori Land Councils (now Maori Land Boards), and conferred upon them certain extensive powers in connection with the alienation and administration of Native lands. These Councils were in certain matters given the same jurisdiction that up to that time the Court alone has exercised, but it was not made clear what relation existed between the provisions of that Act and the different provisions in pari materia of the Native Land Court Act, 1894. Consequently the law contained two sets of different and inconsistent provisions dealing with the same matters, and also recognized two different bodies - namely, the Native Land Court and the Maori Land Board having concurrent and discordant powers and duties in respect of the same matters. Section 22 of this Act, as amended by section 4: of the Maori Lands Administration Act, 1901, makes the following provisions as to alienation:-

(1) Leases of land owned by more than two owners must be consented to by the Council.
(2) Sales of land owned by more than two owners must be consented to by the Governor in Council.
(3) Alienation of land owned by one or two Maoris remains subject to the same law as if this Act had not been passed-that is to say, such land remains subject to section 117 of the Native Land Court Act, 1894.

In 1905, by section 16 of the Maori Land Settlement Act, 1905, all restrictions on the leasing of Native land were abolished, whether those restrictions were imposed by the Crown grant or by any former statute. But no lease was to be valid unless the approval of the Maori Land Board was endorsed on it. The Board was not to approve a lease unless-

(a) The rent was adequate;
(b) The Native lessor had sufficient 1and or income for his support;
(c) The lease did not exceed fifty years;
(d) The lease took effect in possession and not in reversion.

By the Maori Land Laws Amendment Act, 1908, section 7, the Native Land Court is deprived (except as to the South Island) of the power of confirming alienations, and this power is transferred to the Maori Land Boards.

Trusts – From time to time more or less successful attempts have been made to deal with Native land by transferring the administration of it to trustees or other authorities on behalf of the Native owners. The chief instances of this are the following:-

1. Considerable areas of land are vested by statute in the Public Trustee as Native reserves in trust for the Native owners.
2. Under the Native Land Court Act, 1894, the owners of a block of Native land could be incorporated by an order of the Native Land Court, and the land could then be dealt with and alienated by an elected committee on the terms and in the manner prescribed by Order in Council. A similar provision for incorporation by order of a Maori Land Board was contained in the Maori Lands Administration Act, 1900.
3. Under various statutory provisions blocks of Native land became vested in Maori Land Boards on trust for the Native owners, with extensive powers of administration and alienation; e.g.,-

    (a) By section 28 of the Maori Lands Administration Act, 1900, as amended by section 6 of the amending Act of 1901, and by section 20 of the Maori Land Laws Amendment Act, 1903, the owners of Native land might, in pursuance of a resolution passed at a meeting or them, transfer their land to the Maori Land Board, and the Board had power to lease or mortgage the land so vested in it.

    (b) By section 8 of the Native and Maori Land Laws Amendment Act, 1902, the Governor might by Proclamation vest any Native land in the Maori Land Board as a site for a Native township, and the land was then to be held, administered, and disposed of accordingly in trust for the Native owners.

    (c) By section 8 of the Maori Land Settlement Act, 1905, the Governor in Council might vest in the Maori Land Board any Native land situated in certain districts if, in the opinion of the Native Minister, those lands were not suitable for Native occupation. Lands so vested in the Board could be leased or mortgaged by it on behalf of the Native owners. By section 3 of the Maori Land Settlement Act Amendment Act, 1906, these provisions were extended to any land which in the opinion of the Native Minister had not been properly cleared of noxious weeds.

    (d) By sections 8 and 9 of the Native Land Rating Act, 1904, it was provided that Native lands in respect of which judgment had been obtained against the owners for unpaid rates might be similarly administered by the Board.

    (e) Under Part I of the Native Land Settlement Act, 1907, the Governor in Council may vest in the Maori Land Board any area of Native land which has been reported as not required for Maori occupation by the Commission referred to in the Preamble to that Act. Every area so vested in a Board shall be disposed of on behalf of the Native owners-one-half by way of sale on deferred payments, and the other half by way of lease for any term not exceeding fifty years, with compensation to the lessee for improvements.

    (f) Under Part II of the same Act of 1907 the Governor might by Order in Council transfer to a Maori Land Board the exclusive management and control of any area reserved for Maori use and occupation by the aforesaid Commission. Thereupon that area became wholly inalienable by the Native owners, and the Board must dispose of the land by way of lease to Maoris only.

SUCCESSION TO NATIVE LAND

The first Act dealing with the succession to the property of Natives is apparently the Intestate Natives Succession Act, 1861. This is limited to intestacy and to freehold land. In such cases the

land is to descend according to Native custom, instead of in accordance with the English law of primogeniture, which was at that time still in force. The successor obtains the land by means of the issue of a new Crown grant or by means of a conveyance executed by the Colonial Secretary.

In 1865 these provisions were repealed by the Native Lands Act, 1865, and the Native Land Court was given power to issue "testamentary orders" determining the succession according to Native custom of a Native dying intestate possessed of freehold lands. Every such order had the same effect as a will devising the land to the successors.

In 1873 these provisions were extended by the Native Land Act, 1873, to include not merely freehold land, but also customary land of which the title had been ascertained by certificate of title or memorial of ownership issued by the Court.

In 1876 was passed the Intestate Native Succession Act, 1876. This dealt for the first time with succession to the personal estate of intestate Natives, and gave power to the Native Land Court to determine who were entitled to succeed to such property according to Native custom, and who was best entitled to have the administration of the estate. The certificate so granted by the Native Land Court was made a sufficient authority to the Supreme Court to grant letters of administration of the estate in favour of the successors and administrators so nominated. Until the passing of this Act the succession of Natives to personal property was governed by the ordinary law.

In 1881this Act was repealed by the Native Succession Act, 1881. The power of the Native Land Court to appoint a successor to real or personal estate was extended to cases where the deceased left a will, whether formal or informal. Customary land of which the title had been ascertained is to descend according to Native custom; freehold land is to descend according to English law, except that marriages according to Native custom are to be recognized as valid. In 1882, however, Native custom was again substituted for English law in the succession to freehold land.

The Act of 1881 was repealed by the Native Land Court Act, 1886, but its provisions were re-enacted without substantial alteration.

In 1889, by the Native Land Court Act Amendment Act, 1889, the Native Land Court was empowered for the first time to grant administration of the personal estate of a Native, if the estate did not exceed £200. Till this date administration was granted by the Supreme Court on the certificate of the Native Land Court as to the succession.

In 1890, by the Native Land Laws Amendment Act, 1890, this principle was extended, and the Native Land Court was given the same powers as the Supreme Court of granting probate of wills and letters of administration of the estates of Natives.

In 1894, by the Native Land Court Act, 1894, the following provisions were made as to succession:-

(1) All successions to be according to Native custom (if any), and if not, then according to English law.
(2) The jurisdiction of the Native Land Court to grant probate and letters of administration is made exclusive.
(3) Notwithstanding any will, the Court may award sufficient land to any person who would have been entitled on an intestacy.

.In 1895, by the Native Land Laws Amendment Act, 1895, it was provided that the land of a deceased Native is not to vest in his administrator – that is to say, it is to pass directly to his successor by virtue of a succession order. It was also provided that no probate could be granted more than two years after the death of the deceased. Unwritten wills were abolished.

In 1901, by the Maori Lands Administration Act, 1901, the Court was empowered to award to the widow of a deceased Native a life interest in the real or personal estate of the deceased. No adoption was to be recognized for the purposes of succession unless the adoption had been registered in the prescribed manner by the Native Land Court.

MAORI MARRIAGE LAW

By Maori custom the contract of marriage was created by consent merely, without any formality of celebration, and polygamous marriage was allowed. Such customary marriages were recognized by law as sufficient for the purposes of succession to the estates of Maoris and half-castes, whether the estate consisted of land or personal property, and whether the land was customary or freehold. No such marriage, however, was valid for any other purpose.

On the other hand, marriages between Maoris were not subject to the requirements imposed by the Marriage Act, 1908. Maoris might, if they pleased, marry in accordance with that Act, but they were not obliged to do so. They were entitled, instead, to marry in accordance with the English common law, and by that law the only requirement is that the marriage must be celebrated before an episcopally ordained clergyman – that is to say, a clergyman of the English or Roman Catholic Church. By the Marriage Ordinance of 1842, indeed, it was provided that "all marriages solemnized by any minister of any Christian denomination who shall not have received episcopal ordination shall be as valid as if the said minister had received such ordination". This Ordinance, however, was repealed in 1891, apparently in forgetfulness of the fact that, though no longer required in respect of European marriages, it was still an operative enactment with respect to Maori marriages. Since 1891 Maoris must, in order to marry validly for any purpose other than succession to property, marry either in accordance with the full requirements of the Marriage Act or else in the presence of a clergyman of the English or Roman Catholic Church. It is doubtful whether a half-caste was not bound in all cases to marry in accordance with the Marriage Act: Matiu v. Monika (26 NZLR 642).

By the Native Land Act, 1909, all marriages between Natives are required to be celebrated either (1) in the same manner as a marriage between Europeans, or (2) in the presence of an Officiating Minister under the Marriage Act, but without the other conditions and formalities required by that Act. Marriages in accordance with Native custom, however, are still recognized as sufficient for the purposes of succession to Native land.

Appendix 16

Second Schedule Public Reserves and Domains Act 1908 (incorporating amendments by s4 Public Reserves and Domains Amendment Act 1914)

Classification of Reserves

Class I. Reserves for County, Local, and Municipal Purposes

ABATTOIRS.
Acclimatisation.
Agricultural and pastoral societies..
Aqueducts and watercourses.
Baths.
Bridges.
Canals.
Cattle-yards.
Cemeteries.
Drains and water courses.
Embankments.
Ferries.
Gravel-pits.
Growth and preservation of timber.
Improvement and protection of rivers.
Internal communication by land or water.
Irrigation purposes.
Landing-places upon rivers and lakes.
Libraries.
Mechanics' Institutes and Athenaeums.
Plantations.
Provincial Government purposes.
Public buildings, and other objects for local governing bodies.
Public Halls.
Public pounds.
Quarries.
Reservoirs.
Sewage purposes.
Sites of markets.
Supply of water to towns.
Turnpikes.
Wash-houses.
Water-races and canals.

Class II. Reserves for Public Works and General Purposes

Commonages on goldfields and elsewhere.
Courthouses.
Drill-sheds and rifle ranges.
Fisheries.
Gaols or prisons.
Museums.
Police stations and purposes.
Public buildings of the General Government.
Quarantine grounds for stock and otherwise.
Railways and stations.
River-frontage reserves.
Shearing reserves, and for travelling stock.
Telegraphs.
Tramways.
Any other reserve 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

Coal reserves.
Docks
Foreshore reserves.
Landing-laces.
Lighthouses.
Quays.
Reserves for improvement of harbours.
Reserves for military purposes and defence.
Signal-stations.

Reserves for Education, Charitable Purposes, and Recreation

Asylums.
Charitable institutions.
Colleges.
Endowments for education.
Endowments for universities.
Hospitals.
Parks and domains.
Public gardens.
Recreation reserves.
Reformatories.
Sites and grounds for schools.

Native Reserves

Reserves for the use, support, or education of aboriginal Natives.