

Crown Land Issues: Rivers & Streams



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Senior Surveyor
Surveyor-General Victoria
Tuesday, 28 July 2020



Environment,
Land, Water
and Planning

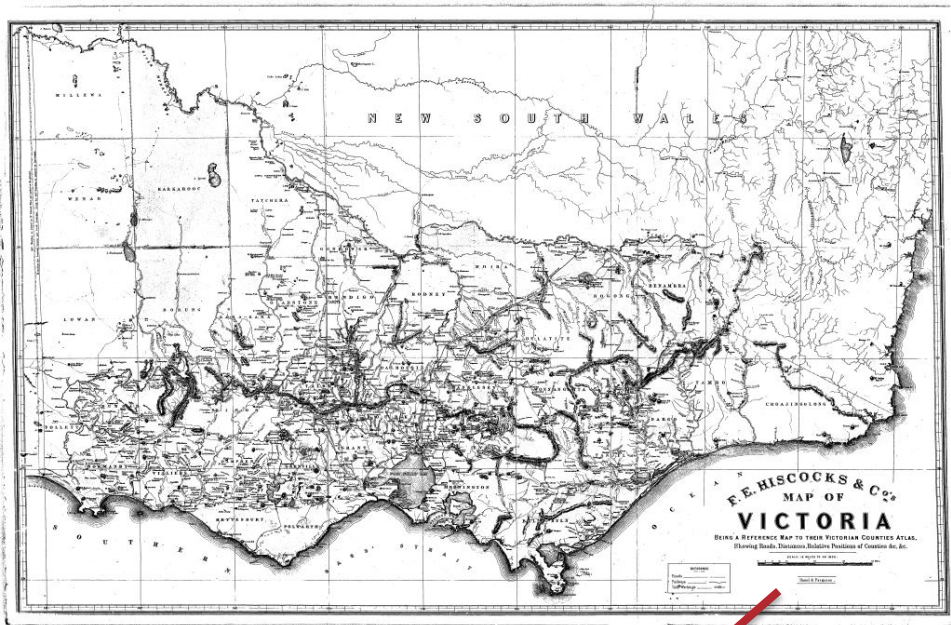
- Victorian Land dealings from the 1830s – 1880s
- Crown land status tenures and types circa the 1880s
- Early Acts and Government Gazettes
- Other Reservations over Crown land along watercourses
- The 1881 Reservation on Crown land along watercourses
- The impact of the Reservations on the decisions of land surveyors
- How the Doctrine of Accretion is applied within the 1881 Reservations
- The impact of the 1905 Water Act on Crown land boundaries
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- Example plans
- An interesting issue along the Murray River, being a State border
- Introduction to a case study of a watercourse as Parish boundary and the difficulties encountered

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Land dealings from the 1830s – 1880s

County Map dated 1874



VICTORIA

BEING A REFERENCE MAP TO THEIR VICTORIAN COUNTIES ATLAS,
Showing Roads, Distances, Relative Positions of Counties &c, &c.



County of Gunbower

History - from the early 1830s to 1881

1830s

Land sales in Victoria began.
Initially granted by NSW

1851

Victoria separates
from NSW

- Land sold initially was:
 - suitable for farming,
 - concentrated along reliable fresh water sources,
 - utilised the coastline providing port access for shipping of goods
 - located in townships to service the surrounding area
- Major navigable rivers proved to be lifelines for early development and commercial requirements
- Water provided basic infrastructure and lines of communication
- Gold discoveries in the 1850s intensified the granting of land, in particular along valleys and watercourses. This resulted in a very fragmented pattern of Crown reserves

History - from the early 1830s to 1881

ANNO DECIMO TERTIO & DECIMO QUARTO

VICTORIÆ REGINÆ.

1850 NSW
Legislation

C A P. LIX.

An Act for the better Government of Her Majesty's *Australian* Colonies.
[5th August 1850.]

Below is an extract from the 1850 Act “allowing” the creation of the
Colony of Victoria

End of the then next Session of Parliament : And whereas it is expedient that the District of *Port Phillip*, now part of the Colony of *New South Wales*, should be erected into a separate Colony, and that further Provision should be made for the Government of Her Majesty's *Australian* Colonies : Be it

History - from the early 1830s to 1881

An extract from the 1850 Act

District of Port Phillip to form a separate Colony, to be known as the Colony of Victoria.

Territories now comprised within the said District of *Port Phillip*, including the Town of *Melbourne*, and bounded on the North and North-east by a straight Line drawn from *Cape How* to the nearest Source of the River *Murray*, and thence by the Course Course of that River to the Eastern Boundary of the Colony of *South Australia*, shall be separated from

Boundary of Victoria & NSW can be altered

XXX. And be it enacted, That in case at any Time hereafter the Legislative Councils of the said Colonies of *New South Wales* and *Victoria*, or the Legislative Council of one of the said Colonies, shall petition Her Majesty to alter the Boundaries of the said Colonies of *New South Wales* and *Victoria*, so as to transfer to one of such Colonies a Portion of the Territories which, after the Separation authorized by this Act, shall be comprised in the other of them, it shall be lawful for Her Majesty, if She shall think fit, by any Order to be made with the Advice of Her Privy Council, to alter such Boundaries in pursuance of the Prayer of such Petitions or Petition, or in such varied Manner as Her Majesty with such Advice shall think fit : Provided always, that unless

Number 34



SUPPLEMENT
TO THE
PORT PHILLIP
GOVERNMENT GAZETTE

OF WEDNESDAY, JULY 2, 1851.

Published by Authority.

WEDNESDAY, JULY 9, 1851.

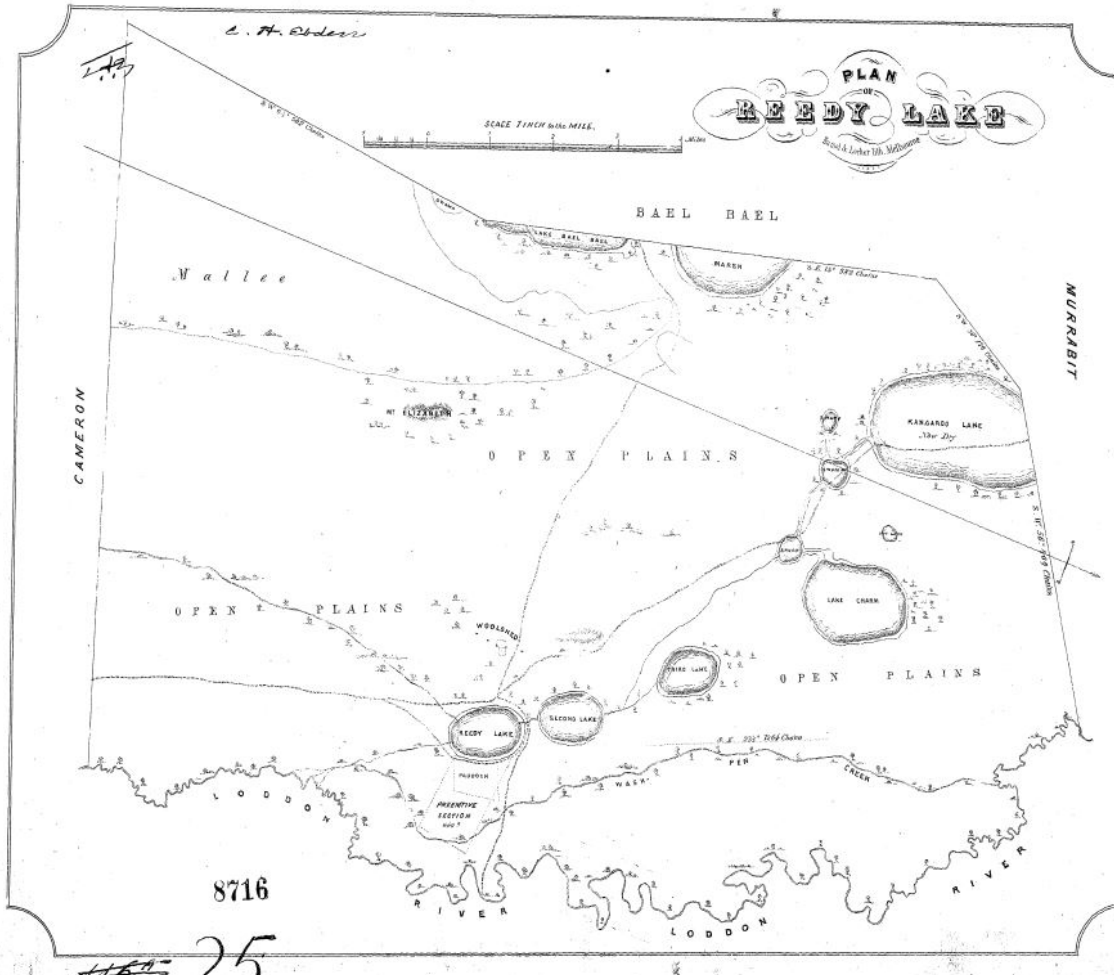
prised within the said District of Port Phillip, including the Town of Melbourne, and bounded on the north and north-east by a straight line drawn from Cape Howe to the nearest source of the River Murray, and thence by the course of that river to the eastern boundary of the Colony of South Australia, shall be separated from the Colony of New South Wales, and shall cease to

History - from the early 1830s to 1881

- Government surveyors designed Victoria's first subdivisions and were effectively the first land resource planners
- Prior to the reservations of both the 1870s and 1880s, many Crown reserves were previously set aside to support development and provide domestic water
- Regular water reserves over fresh water springs were created to aid the droving of stock across the State
- The danger of allowing permanent water to be controlled by a small number of settlers had been identified
- By the late 1850s the retention of unbroken strips of Crown land along the margins of water emerged as a general policy. **But it took many years to formalise this!**

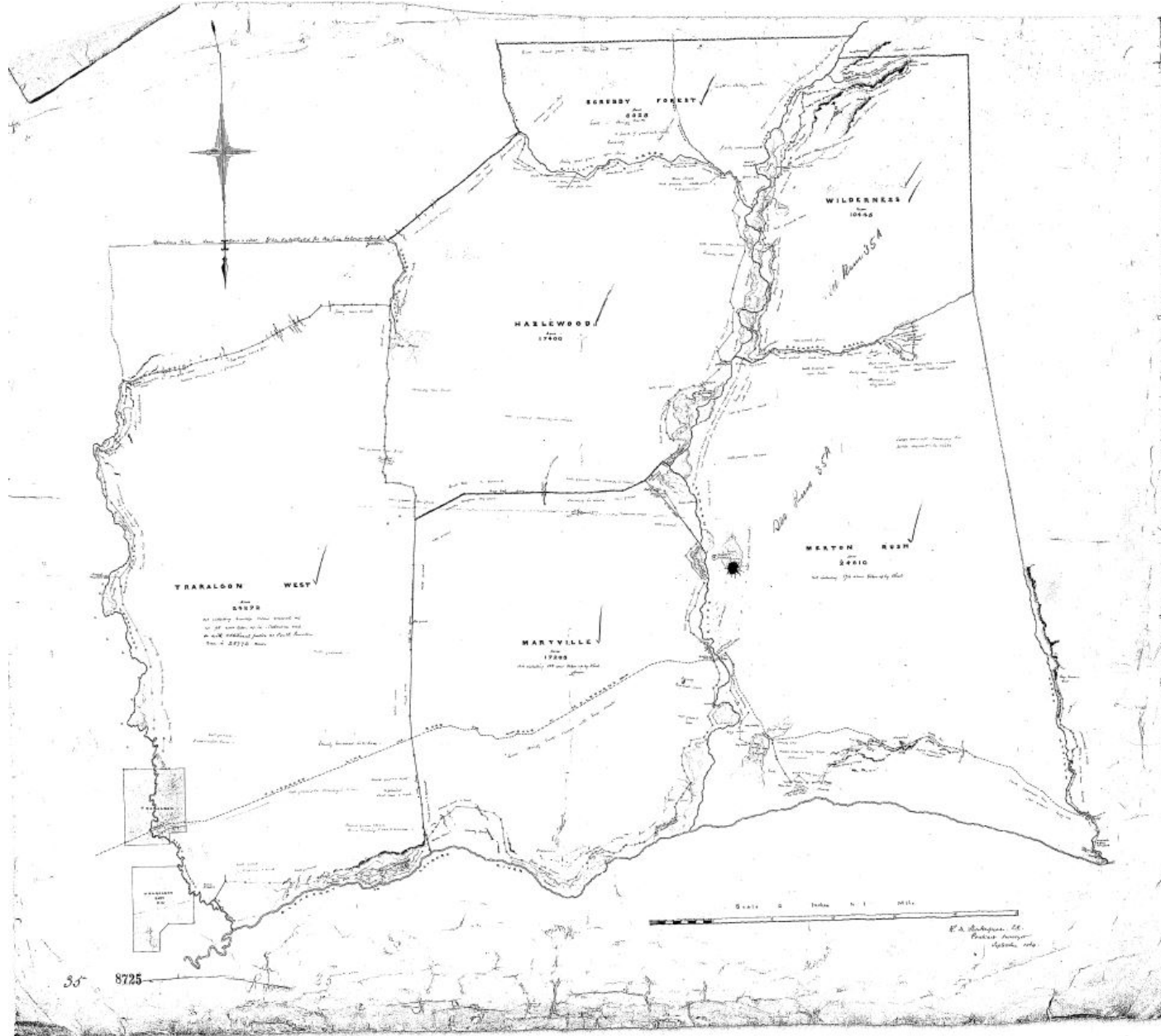
History - from the early 1830s to 1881

- Initially, Surveyors prepared maps of Pastoral Runs that had already been taken up by “squatters”
- This preceded many grants of freehold land



A Pastoral Run along the Loddon River

Land dealings from the 1830s – 1880's



1864 Pastoral Run plan along the Latrobe & Morwell Rivers and several creeks showing areas including: 24,610 acres 24,272 acres. Particularly impressive for the era with all that river frontage.

Also shown here is the "Telegraph Line & Road from Sale to Melbourne".

History - from the early 1830s to 1881



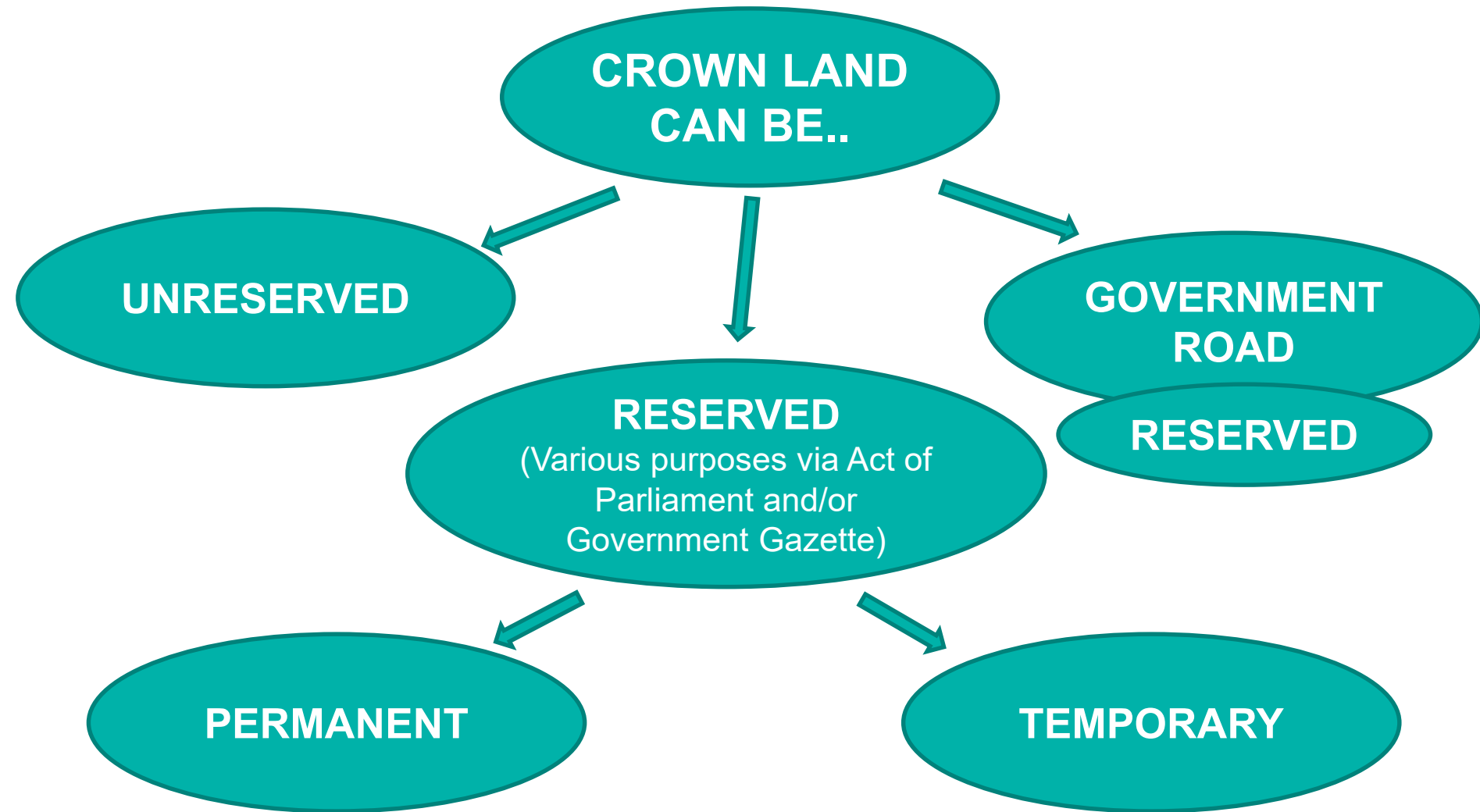
Pastoral Run
along the
Glenelg River &
a creek, with
one boundary
defined as “Line
of Heath”.

Note the area shown to the nearest acre. And there are no roods or perches!

- Successive governments saw that the general public was being denied access to water for recreation & other activities
- In addition, settlers whose property did not have direct access to permanent water, needed access to nearby rivers & streams
- The 1881 gazettal of the Reserves did much to enhance, preserve and protect the corridors of Crown land along waterways
- Crown reserves were intended officially for public use; for water supply and recreation
- With adjoining land often sold for farming, access by the public to these strips of Crown reserves remained difficult

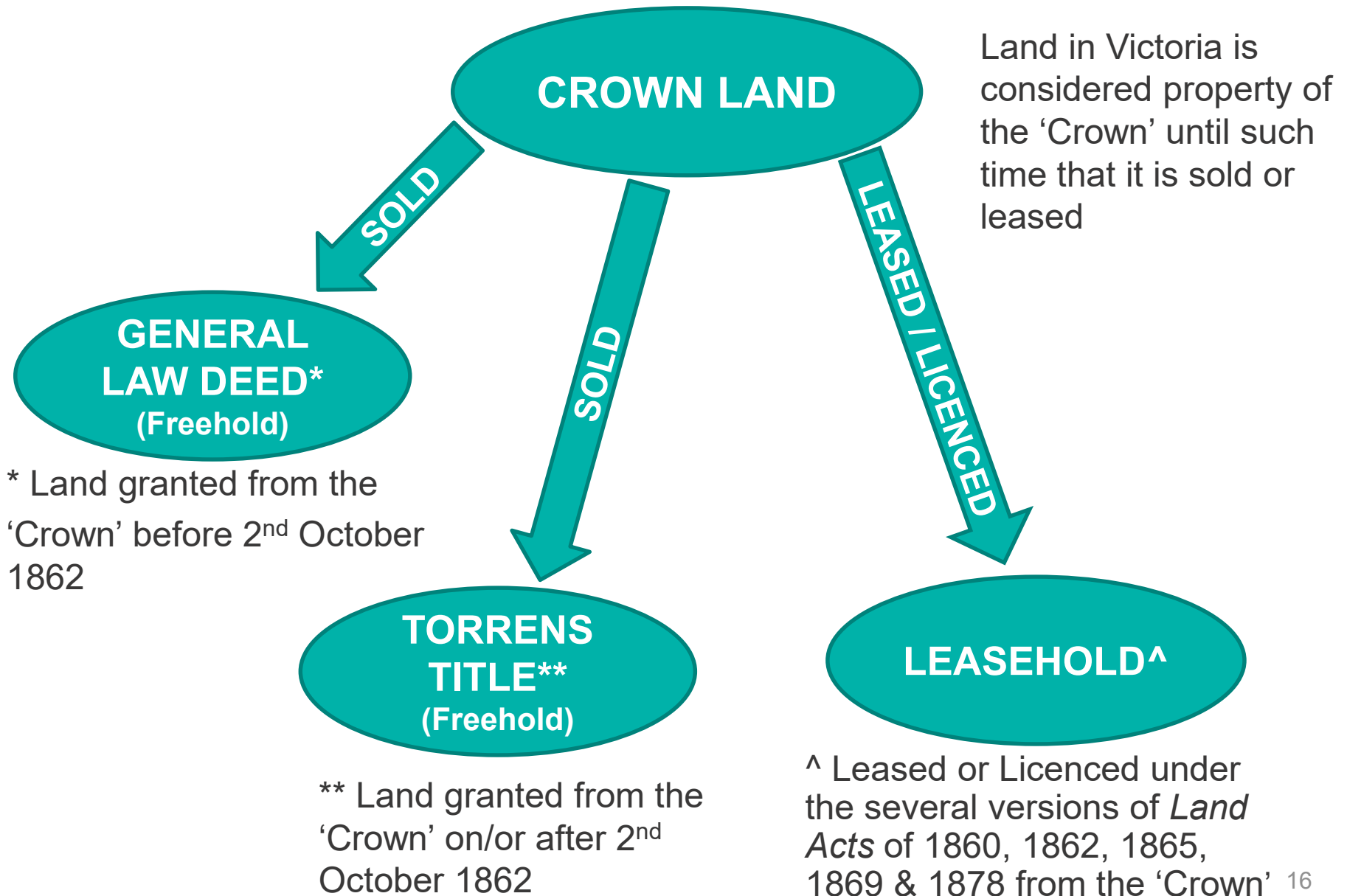
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Crown Land Status tenures circa the 1880s



A Crown land parcel can have many differing status affecting it, in part and/or in whole

Crown Land Status tenures circa the 1880s



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Acts & Gazettals and other Crown Reserves

- Early versions of the Land Act are dated 1860, 1862, 1865, 1869 & 1878
- The Governor of the State of Victoria publishes certain decisions in the Government Gazette
- These decisions are determined by the Governor at meetings with the relevant Minister(s) of Parliament and high level advisors
- Decisions are made using powers vested in the Governor under various Acts, such as the Land Act 1869
- These decisions are termed to have been made by the “Governor in Council” and often referred to as an “Order in Council”
- In the early days of settlement these often involved land sales & leases together with Crown land reservations

Acts & Gazettals and other Crown Reserves



ANNO TRICESIMO TERTIO

VICTORIÆ REGINÆ.

CCCLX.

An Act to amend and consolidate the laws relating
to the Sale and Occupation of Crown Lands.

[29th *December* 1869.]

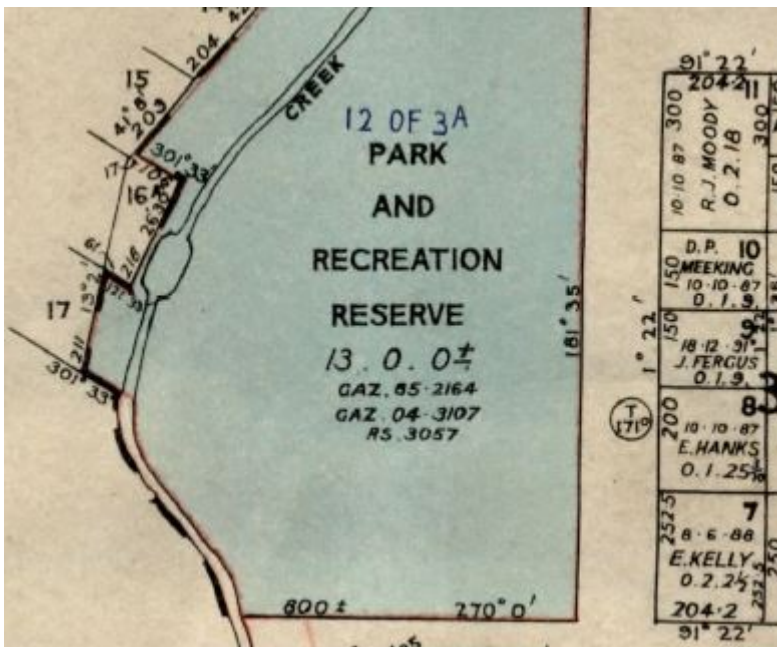
BE it enacted by the Queen's Most Excellent Majesty by and with
the advice and consent of the Legislative Council and Legislative
Assembly of Victoria in this present Parliament assembled and by the
authority of the same as follows :—

PART I.—INTRODUCTORY.

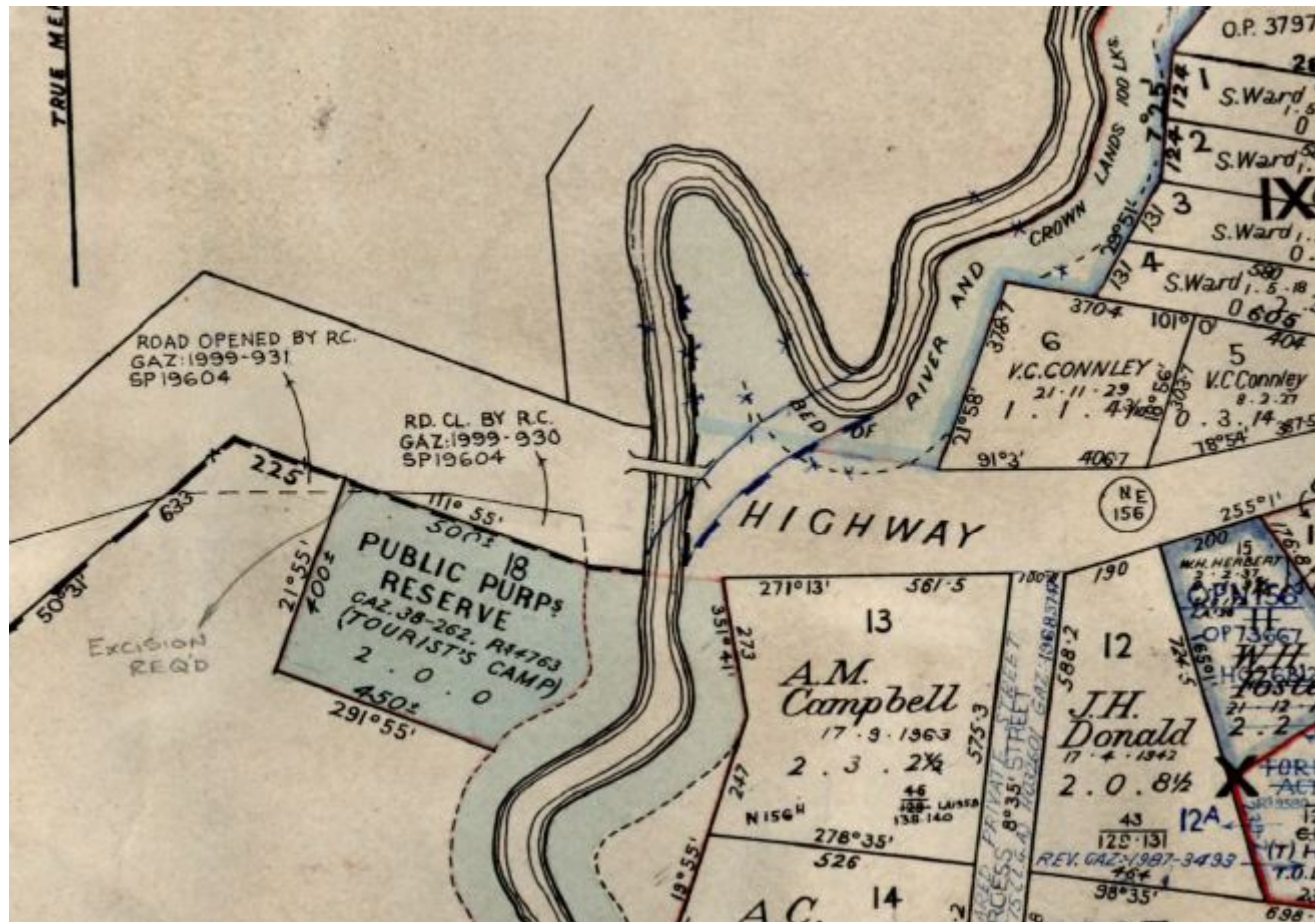
1. This Act shall be called and may be cited as “*The Land Act 1869*” and is divided into Parts and divisions as follows :—

Land Act 1869

Acts & Gazettals and other Crown Reserves



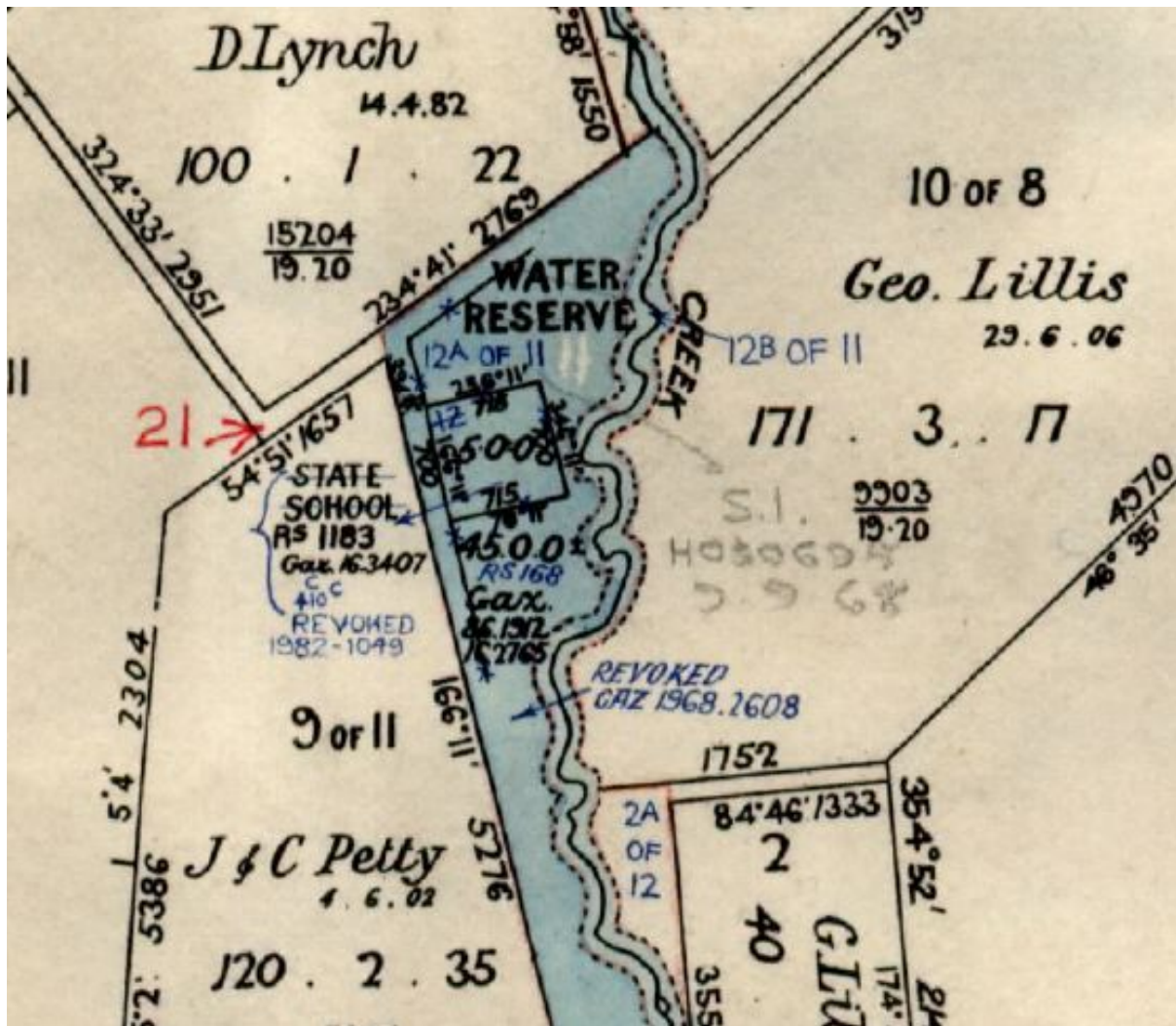
Acts & Gazettals and other Crown Reserves



This example shows a Public Purposes Reserve for Tourist's Camp (1938) adjoining the 1881 Reservation. Note the Government road most likely has dual status, even though it is not coloured.

- Thorough research of each and every gazettal is required
- The status of Temporary and Permanent must be noted
- The dates of the gazettals (in relation to 1881) may become critical
- Current Record Plans are the primary source for surveyors to begin to piece together the mosaic of information
- **NEVER** rely on the Vicmap map-base (eg LASSI) for correct parcellation or land status

Acts & Gazettals and other Crown Reserves



This example shows multiple types and dates of reservations AND revocations of some reserves.

Note also the Government roads – are they or aren't they? If they are, does a reservation also apply?

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- Water frontage reserves range normally from 20 to 60 metres from either bank
- Many thousands of kilometres of river frontage are reserved, resulting in several thousands of hectares of public land Permanently Reserved
- The lineal and narrow shape of these reserves makes management by the State difficult
- Licensed Surveyors often find themselves having to deal with these strips in the course of a survey
- Adjoining private landholders tend to be protective of this land and attempt to deny public access, as if it was owned by them, often running their side fences to the water

- **The 1881 Permanent Reservation represented the greatest protection that could be afforded, being reversible only by an act of Parliament**

27 May 1881 the Governor-in-Council published in the Government Gazette the following order

1389

May 27, 1881.

LANDS PERMANENTLY RESERVED FROM SALE.

IN pursuance of the provisions of *The Land Act 1869* (33 Vict. No. 360, § 6 and 8), the Governor in Council has reserved from sale, *permanently*, the lands hereinafter referred to viz. :—

Reserved by Orders of 23 May 1881.

Sites for Public Purposes, Nos. 1 to 20 inclusive. See *Gazette* of 11 February 1881.

Sites for Public Purposes, Nos. 21 to 44 inclusive. See *Gazette* of 25 February 1881.

Sites for Public Purposes, Nos. 45 to 62 B inclusive. See *Gazette* of 4 March 1881.

Sites for Public purposes, Nos. 62 C to 70 B inclusive. See *Gazette* of 18 March 1881.

R. RICHARDSON,

Commissioner of Crown Lands and Survey.

Lands and Survey Office,
Melbourne.

1389

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Sites for Public Purposes, Nos. 62C to 70B inclusive. See *Gazette* of 18 March 1881.

- In itself, the gazettal seems pretty useless, however
- It's function primarily was to:

PERMANENTLY RESERVE FROM SALE

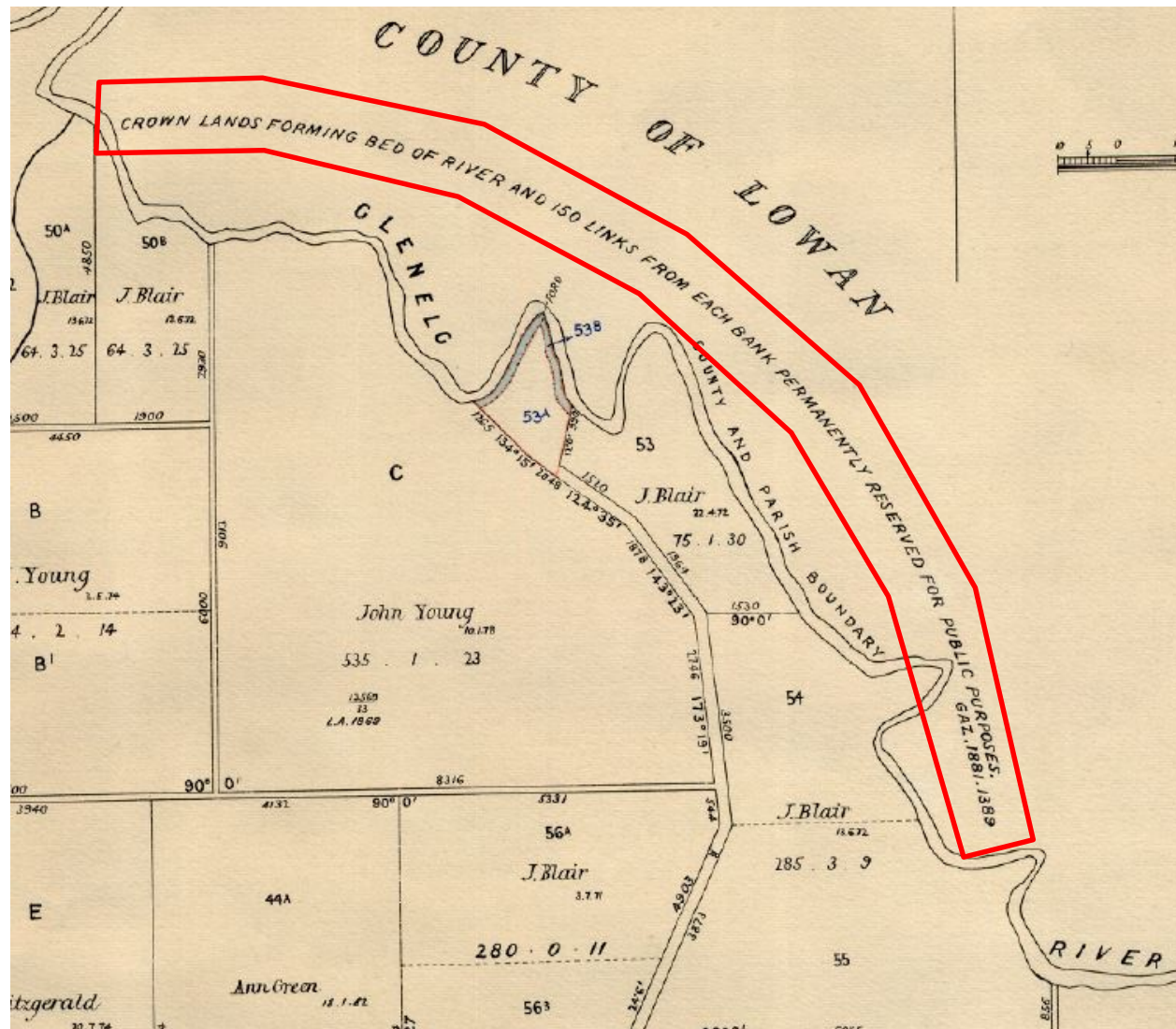
land along some 280 watercourses

- It tells you that these reserves are for:

PUBLIC PURPOSES

- It advises that this happened under the *Land Act 1869*
- Very importantly, it tells you exactly where to find out more
- We often see it written as “**GAZ. 81.1389**”

This notation is found on many Current Record Plans





- The general gazettal note can be seen on most Parish & Township Plans in Victoria
- Often, the relevant land is shown coloured
- However, the note **does not** constitute a blanket “reservation” along every watercourse within that Plan
- Furthermore, not all Parish Plans were coloured correctly.

Or accurately.

Or at all.

- Knowledge and interpretation of the individual gazettal is required


- The reservations could not be created if the land was not “owned” by the State in 1881
- Vast tracts of land had already been granted and were existing freehold
- Many parcels of land were also held under leasehold at the time, with the objective of sale by the Crown and eventual conversion to freehold
- In common law at the time land granted or leased, went to the centreline of an abutting watercourse, not the bank
- As a result, the reservations are often broken and fragmented along the lengths of many watercourses

- The four earlier Gazettals provided specific descriptions regarding each and every one of the reservations
- This included if the bed was included, the width of the reserve from the bank and where widths varied, descriptions of the locations of the variations. For example, between certain junctions with intersecting watercourses
- The gazettals stipulated that the reservations **ONLY** applied to existing Crown land

1889

May 27, 1881.

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R. RICHARDSON,
Commissioner of Crown Lands and Survey.
Lands and Survey Office,
Melbourne.

The gazettals that preceded the 1881 Order in Council

LAND PROPOSED TO BE PERMANENTLY RESERVED FROM SALE.

IN pursuance of the provisions of *The Land Act 1869* (33 Vict. No. 360, § 6 and 8); Notice is hereby given that it is the intention of the Governor in Council to reserve from sale, permanently, for public purposes, the lands hereinafter described, viz.:

The following Notice was gazetted 1st on 11 February, pursuant to Order of 7 February 1881.

Glenelg River

1. *River Murray.*—Along the left bank of the River Murray from its source to the point where the boundary-line between the colonies of South Australia and Victoria intersects the same, all land, the property of the State, within a distance of three chains from the ordinary winter level of the river as confined by the said left bank, and as regards the several ana branches leaving and re-entering that river on its left bank, the beds of the same, and all lands of the State within a distance of two chains from either bank of the said ana branches measured from the winter level of the water confined within the said banks.

2. *River Glenelg.*—(A.) The bed of the River Glenelg from its source in the Victoria Range to the point at which the River Stokes falls into it, and all land, the property of the State, within a distance of one hundred and fifty links from either bank of the said river between those points measured from the ordinary winter level of the river as confined within the said banks. (B.) The bed of the said river from the junction of the River Stokes to high-water mark made by spring tides on the shore of Discovery Bay (excluding that portion of the river bed which falls into South Australian territory), and all lands, the property of the State, within a distance of three chains from either bank of the said river measured from the ordinary winter level of the said river, and from high-water mark so far as the tide-waters extend along the bed of the said river.

3. *River Wannon.*—The bed of the River Wannon from its source under Mount William to its junction with the River Glenelg, and all land, the property of the State, within a distance of one hundred and fifty links from either bank of the same, and where there is no defined channel to this river, a strip of land, the property of the State, four chains in width, following the general direction of the lowest level between the points where the defined channel is lost and is again re-formed, and all lands, the property of the State, within a distance of one hundred and fifty links from either bank of the said river, and from high-water mark so far as the tide-waters extend along the bed of the said river.

4. *River Stokes.*—The bed of the River Stokes from its source where it is intersected by the western boundary of the colony of Victoria to its junction with the Glenelg River, and all land, the property of the State, within a distance of one hundred and fifty links from either bank of the said River Stokes measured from the winter level of the water within the said banks.

5. *River Cranford.*—The bed of the River Cranford from its source near Braxholme to its junction with the Glenelg, and all land, the property of the State, within a distance of one hundred and fifty links from either bank of the same measured from the winter level of the water within the said banks.

6. *Surry River.*—The bed of the Surry River from the point where it is crossed by the Portland and Melbourne Railway to high-water mark made by spring tides on the shore of Portland Bay, and all land, the property of the State, within a distance of one hundred and fifty links from either bank of the said river between those points measured from the ordinary winter level of the river as confined within the said banks.

property of the State, within a distance of one hundred and fifty links from either bank of the said river and drainage-channel, the bed of Belfast Lough and of the channel communicating therefrom with Belfast harbor, and all land, the property of the State, within a distance of two chains from the said channel and lough measured from high-water mark at spring tides in said channel, and on the shore of the said lough.

The following Notice was
gazetted 1st on 11 February,
pursuant to ...

Allan's Ford to the point where it falls into Warrnambool Bay, the bed of the river, and all land, the property of the State, within a distance of two chains, measured from high-water mark at spring tides, along such portion of the course of the river; also all land, the property of the State, within a circle of five chains radius around the Hopkins Fall, measured from the centre of the said fall.

... all land, the property of the
State, ...

said Mount Emu Creek.

13c. *Tributaries of Mount Emu Creek.*—The beds of the following tributaries of the Mount Emu Creek, viz. :—Trawalla Creek, Spring Hill Creek, from their source in the Great Dividing Range, and Baillie's Creek from the point that it emerges from Lake Burrumbeet, to their several junctions with Mount Emu Creek, and all lands, the property of the State, within a distance of one hundred and fifty links measured from either bank of the said streams.

14. *Curdie's River and Inlet and Lake Parrambeet.*—The bed of

The bed of the River ...

... and ...

... a distance of 150 links from either bank ...

property of the State, within one hundred and fifty links from either bank of the same down to the extreme point reached by the tidal water; thence all lands, the property of the State, within two chains of high-water mark at spring tides on either bank of the said river to its mouth.

15. *Aire River.*—The bed of the Aire River from its source in the Coast Range to its mouth, and all land, the property of the State, within one hundred and fifty links of either bank of the

PERMANENT RESERVATIONS

ON

RIVERS, CREEKS, LAKES Etc.

1881 Order in Council – SGV Listing

RIVERS, CREEKS, LAKES, ETC. (GAZETTE 1881/1389 UNLESS SPECIFIED)	FIRST GAZETTING	NUMBER
MUDDY CREEK (see Yea River)	1881/817	62D
MULLUM MULLUM CREEK (formerly Deep Creek) (Tributary of the Yarra River)	1881/586	29
MURPHY CREEK (see Morass Creek)	1881/691	57B
MURRABIT RIVER	1881/817	65C
MURRAY RIVER	1881/484	1
MURRAY RIVER ANA-BRANCHES	1881/484	1
MURRINDAL RIVER (formerly Murrindall River)	1881/691	51A
MYRNIONG CREEK	1881/586	28A
MYRTLE CREEK (see Barwidgee Creek)	1881/691	59A
MYRTLE CREEK (Tributary of the Coliban River)	1881/817	63B
NARIEL CREEK	1881/691	56
NARRACAN CREEK	1881/587	42B
NIAGARA CREEK (see Snobs Creek)	1881/817	62C
NICHOLSON RIVER	1881/691	47
NORTON CREEK	1881/819	69C
OUTLET CREEK	1881/819	70B
OVENS RIVER	1881/691	59
OVENS RIVER EAST BRANCH	1881/691	59
OVENS RIVER WEST BRANCH	1881/691	59
PARKER RIVER	1881/484	18
PARWAN CREEK	1881/586	28A
PAUL CREEK (formerly Pauls or View Hill Creek)	1881/586	29
PICCANINNY CREEK	1881/817	65A
POHLMAN CREEK	1881/817	63B
POOMUC CREEK (see Cardinia Creek)	1881/586	31
PYRAMID CREEK	1881/817	65B
PYRITES CREEK (formerly portion of Colmadal Creek)	1881/586	28A
REEDY CREEK (Tributary of the Ovens River)	1881/691	59A
REEVE CHANNEL (formerly Reeves River)	1881/691	49A
RICHARDSON CREEK	1881/818	68A
RICHARDSON RIVER (formerly Richardson River and part of the Avon River)	1881/818	68
RUBICON RIVER	1881/817	62C
RUFFEY CREEK	1881/586	29

1881 Order in Council – SGV Listing



1881/1389 UNLESS SPECIFIED)	FIRST GAZETTED	NUMBER
	1881/817	62D
(Tributary of the Yarra River)	1881/586	29
	1881/691	57B
	1881/817	65C
	1881/484	1
	1881/484	1
	1881/691	51A
	1881/586	28A
	1881/691	59A
	1881/817	63B
	1881/691	56
	1881/587	42B
	1881/817	62C
	1881/691	47
	1881/819	69C
	1881/819	70B



12a. *Brucknell C*
its source to the po
all land, the prop
hundred and fifty)

13a. *Tributaries*
following tributari
Creek, Spring E
Dividing Range,
emerges from Lakt
Mount Emu Cree
within a distance
either bank of the

14. *Curdie's River*
Lake Purrumbete
a distance of one h

1881 Order in Council – Earlier gazettal

Some gazettal descriptions pose problems for the surveyor of today!

57. *Mitta Mitta River*—The bed of the Mitta Mitta River from the junction of the Victoria River, and all lands, the property of the State, within a distance of one hundred and fifty links from either bank of the river at its summer level, from the junction of the Victoria River to the River Murray.

57A. *Tributaries of the Mitta Mitta River : Livingstone Creek—Victoria River—Cobungra Creek—Bundarra River—and Big River*—The bed of the Livingstone Creek, the bed of the Victoria River, the bed of the Cobungra Creek, the bed of the Bundarra River, the bed of the Big River, and all lands, the property of the State, within a distance of one hundred links from either bank of the said several creeks and rivers throughout their entire course.

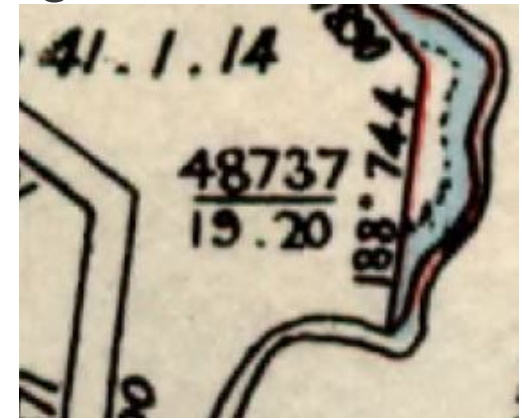
57B. *Benambra Creek—Murphy's Creek—Gibbo Creek—Snowy Creek—and Tallangatta Creek*—The bed of the Benambra Creek, the bed of Murphy's Creek, the bed of Gibbo Creek, the bed of Snowy Creek, the bed of Tallangatta Creek, and all lands, the property of the State, within a distance of one hundred links from either bank of the said several creeks throughout their entire course; and where there is no defined channel to any of those creeks, a strip of land two hundred links in width following the general direction of the lowest level between the points where the defined channel is lost and is again re-formed.

... and where there is no defined channel ... a strip of land two hundred links in width following the general direction of the lowest level between the points where the defined channel is lost and is again re-formed.

- With all this information, what could possibly go wrong?
- Several water courses have changed names, some more than once!
- Most water courses have changed location.
 - Either slowly or suddenly
 - Either by small distances or large
 - Either by natural or man-made causes
- Old surveys, if they exist, can be hard work to plot. But we know that is no excuse!
- Which bank is the Reserve referenced to? The high bank or the low bank?
- There is no aerial photography for that period
- What does “property of the State” mean in practice

- “Property of the State” for our purposes means land that is Crown land
- **AND**
- Does not have a licence or lease affecting it vide an early Land Act.
- Look at the Parish Plans for clues.

The “19.20” indicates the
existence of a Crown lease



- Section 269 of the *Property Law Act 1958* provides some guidance in accepting that leased land can be treated as granted land for this purpose
- Land held under lease in 1881 by virtue of the *Land Act 1869* **is not** the property of the State.

1881 Reservation, Surveyors & the Doctrine of Accretion

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- Note that the Permanent Public Purposes Reserve is the bed and a width from each bank. So the Reserve will total, for example, 300 links (150 + 150) plus the width of the bed
- Surveyors need to fully understand which bank the Reserve is offset to. Is it the high bank or the low bank?
- The surveyor must also assess “the other side of the watercourse”. It may have been granted to the centreline prior to 1881. In that case, the Reserve on one side will go to the centreline, but not beyond. So only “half” the bed is reserved.
- If the “available” Crown land has an existing status, eg Water Reserve, School Reserve or Government road, irrespective if it is Permanent or Temporary, the particular strip of land will still be reserved in accordance with the 1881 gazettal, and so have dual or multiple status. Crown land can have multiple status’

1881 Reservation & Surveyors - boundaries

- In May 1881 these Reserves were “locked” in - permanently
- They are referenced to the river, creek or lake that the specific gazettal refers to
- The position of the “outer” limits of the Permanent Public Purposes Reserve is fixed **AT THAT DATE – in 1881**
- The “outer” boundaries must be re-established in the position where they existed in 1881
- The “outer” boundary does **NOT** follow, or stay parallel to, the banks of the watercourse as it moves over time, nor does it remain at the specified width from the bank eg 100 links or 150 links
- It is *most likely* **INCORRECT** practice to locate the bank today and simply lay off the parallel width of the Reserve

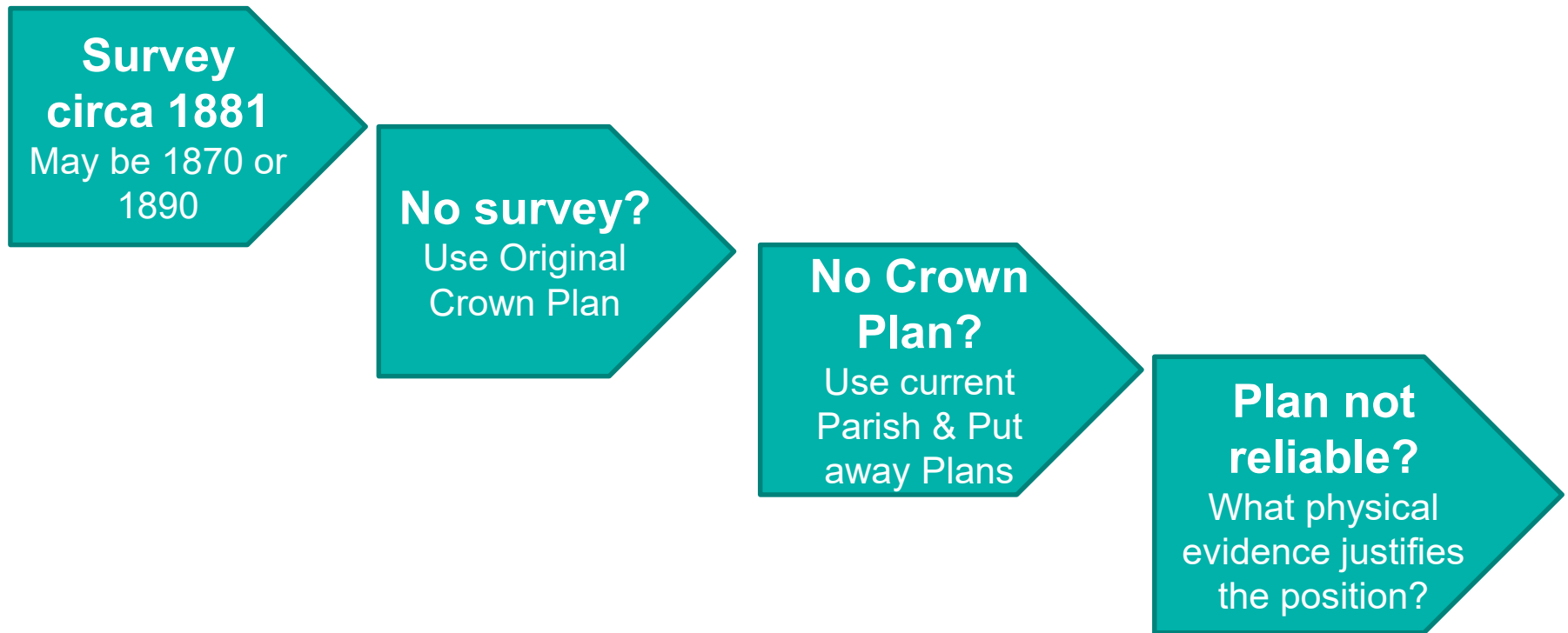
- Since the early 1890's, the Office of the Victorian Government Solicitor has been adamant that the land boundary of all permanent river reserves must be regarded as being fixed at the time of its proclamation (eg.1881)
- The land boundary is therefor not an ambulatory boundary. They are “**fixed**”
- Only the banks of the watercourse are ambulatory boundaries
- Surveyors have several complexities to consider and address in regard to the application of the Doctrine of Accretion

1881 Reservation & Surveyors – Doctrine of Accretion

- Determining if the Doctrine of Accretion applies. And to which boundaries
- Land alienated prior to 1881 was to the centreline of the watercourse
- Nil, or limited, survey records of the watercourse in, or near to, 1881. There is obviously no aerial imagery from that time
- When the watercourse moves out of the Reserve boundary. Is that movement slow and imperceptible, or sudden?
- Parish Boundaries along centreline of watercourses. Is the centreline ambulatory?
- Generally, the only way to remove, alter or amend a **Permanent** reserve is by an Act of Parliament
- The movement of ambulatory boundaries impacts Crown land as well as freehold land

Determining the location of the watercourse in 1881

- The position of the watercourse at the date of the Gazettal is critical
- To re-establish the position of the bank and hence the reserve boundary in 1881, the Licensed Surveyor must access data using the following hierarchy:



Determining the location of the watercourse in 1881

- **Never** rely upon or plot a watercourse from a Crown Grant, Certificate of Title or Title Plan
- The current mapbase in LASSI is also **off limits!** As yet, we don't know what the DCM project will provide in regard to watercourse position accuracy.
- Dimensions on the Parish Plan may not provide precision for plotting a watercourse. They may relate to and define:
 - The high bank
 - Arable or saleable land
 - Edge of thick scrub!

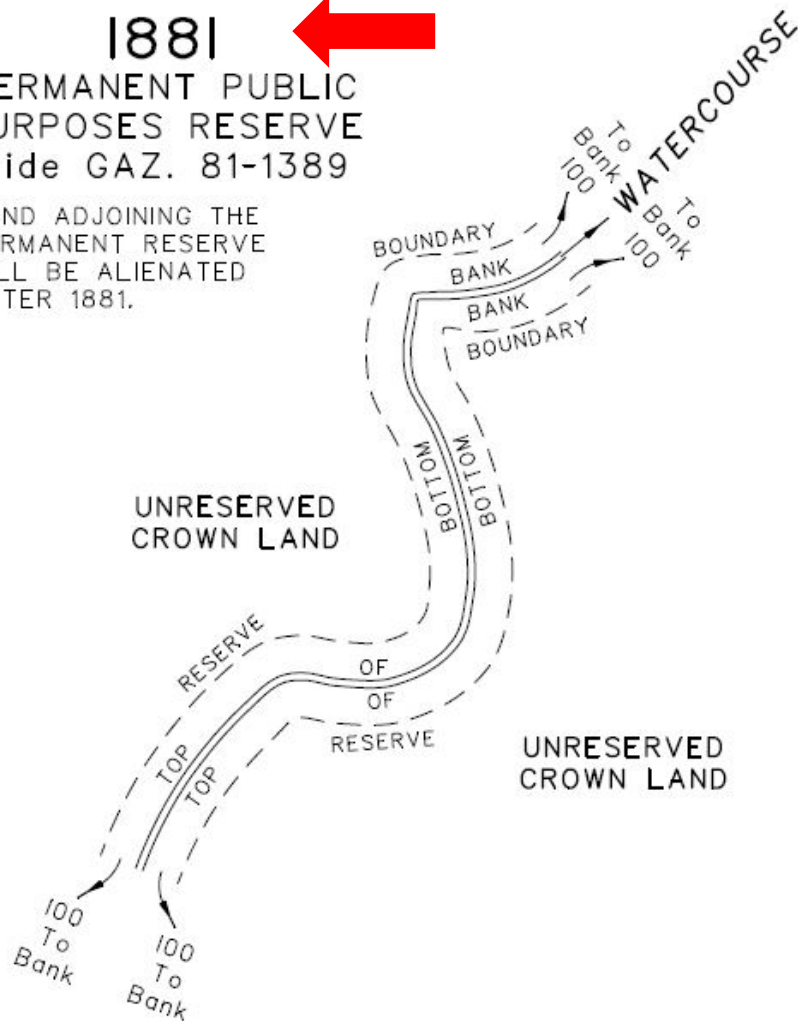
rather than a distance to the centreline or edge/low bank of a watercourse

1881 Reservation & Surveyors – Doctrine of Accretion

1881

PERMANENT PUBLIC
PURPOSES RESERVE
Vide GAZ. 81-1389

LAND ADJOINING THE
PERMANENT RESERVE
WILL BE ALIENATED
AFTER 1881.

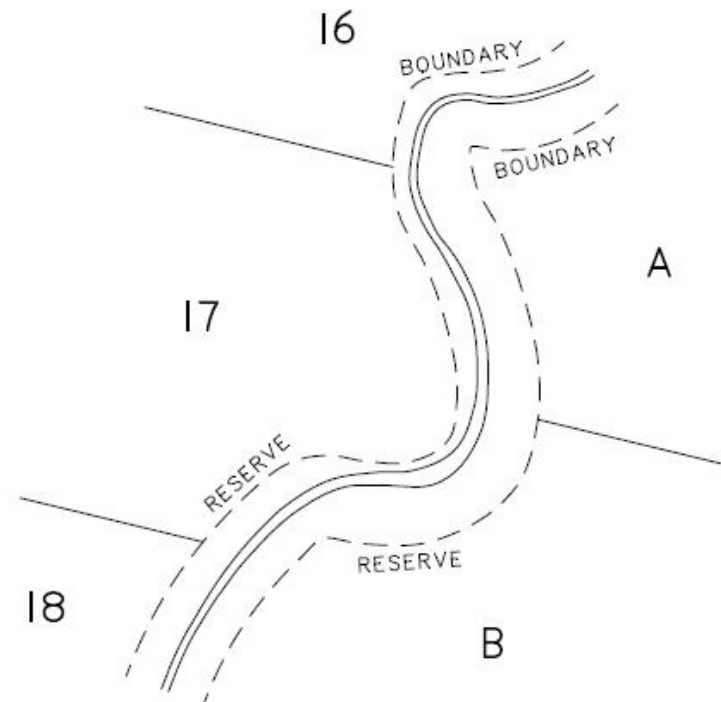


THE RESERVE IS ALL OF THE LAND BETWEEN
THE RESERVE BOUNDARIES, INCLUDING THE
BED OF THE WATERCOURSE.

TODAY

SLOW & IMPERCEPTABLE

LAND ADJOINING THE PERMANENT RESERVE
HAS BEEN ALIENATED AFTER 1881.



THE DOCTRINE OF ACCRETION HAS APPLIED TO
THE LOCATION OF THE BANKS. THE OUTER RESERVE
BOUNDARIES REMAIN UN-AFFECTED & DO NOT MOVE.
THEY DO NOT REMAIN PARALLEL TO THE CURRENT BANK.

- In the previous example there are three (3) “parcels”/”pieces”/”sections” of the reserve that should be considered
 - The offset (100 link) piece on one side of the watercourse
 - The offset (100 link) piece on the other side of the watercourse
 - The bed of the watercourse
- Note that if the centreline becomes a boundary, there may be four (4) sections, 2 between the banks

- Victorian Land dealings from the 1830s – 1880s
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Water Act 1905

Section 5 of this Act “resumed” the land covered by the bed and banks of all watercourses that formed a boundary of an allotment, deeming that land to be crown land, as if it had never been alienated. This Act was retrospective. This is now enshrined in Section 385 of the Water Act 1958. The definition of “bed and banks” here is the wetted perimeter. This therefor refers to the **low bank**. This did not apply to watercourses within allotments, if it was not a boundary.

Sections 6 & 7 provided that affected owners shall retain the rights of ordinary use of the water, and access to the water (amongst other matters).

When we now consider the 1881 Order in Council Reservation, we can see more problems.

If the 1881 OIC refers to the **high bank** and the 1905 Water Act refers to the **low bank** –

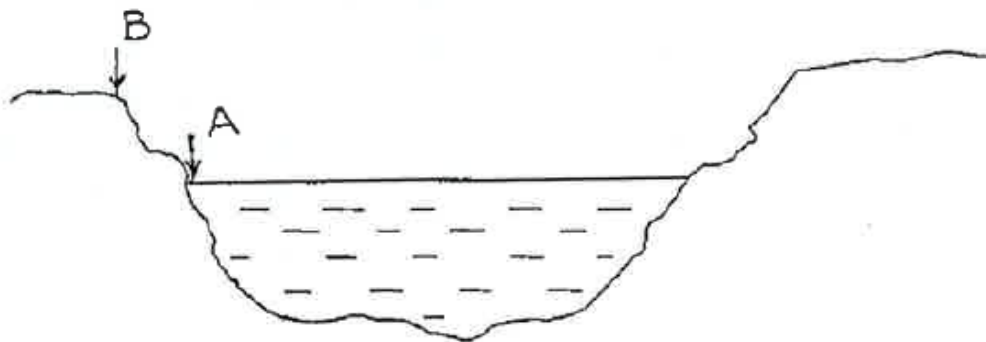
- Then there are two different banks being referred to in two different pieces of statute! Surveyors must be clear in correctly differentiating between these.

There are some resources available, but I acknowledge that these are a bit scant and scattered.

Peter Knights gives us an opinion in the paragraph (of his 1996 paper) after his first “cross section” showing banks A and B. He states:-

“From a study of many surveys over many years, it is my belief that the top of the high bank (point labelled “B” on the sketch) was the origin from which Crown Surveyors...”

It should be made clear that this definition of “bed and banks” only refers to land which is bounded in whole or part by a watercourse and should only be used when defining a boundary pursuant to section 385 of the Land Act 1958. On the sketch hereunder this bank is labelled “A”.





VICTORIA.

ANNO QUINTO

EDWARDI SEPTIMI REGIS.

No. 2016.

Water Act 1905

An Act to consolidate and amend the Laws relating to the Conservation and Supply of Water to declare the Law relating to certain Rights in Natural Waters the property in the beds and banks containing the same and for other purposes.

[12th December, 1905.]

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *Water Act* 1905 and shall come into operation on the first day of May One thousand nine hundred and six, and is divided into Parts Divisions and Subdivisions as follows :—

Short title,
commencement,
and division.

The *alveus* of water courses and lakes not alienated.

5. Where any river creek stream or water-course or any lake forms the boundary or part of the boundary of an allotment of land heretofore alienated by the Crown the bed and banks thereof shall be deemed to have remained the property of the Crown and not to have passed with the land so alienated.

Where any river creek stream or water-course or any lake lagoon swamp or marsh shall form the boundary or part of the boundary of an allotment of land hereafter alienated by the Crown the bed and banks thereof shall notwithstanding such alienation remain the property of the Crown and shall not pass with the land so alienated.

In any such case whether of land heretofore or hereafter alienated by the Crown such bed and banks shall be and remain the property of the Crown notwithstanding that one and the same person has been or is the owner of the lands adjacent to both banks or holds or obtains a consolidated certificate under the *Transfer of Land Act* 1890 in respect of such lands.

But

580

Section 5 of the
Water Act 1905

New s. 385
inserted by
No. 80/1989
s. 327.

385 Crown property in bed and banks of certain watercourses

(1) If—

- (a) land is bounded in whole or in part by a watercourse; and
- (b) the land was alienated by the Crown before, or is so alienated on or after, the commencement of section 327 of the **Water Act 1989**—

the bed and banks of the watercourse remain, and must be taken always to have remained, the property of the Crown despite the alienation of the

Section 385 of the
Land Act 1958

- The practical impact of the 1905 Act for surveyors
 - It only applies to watercourses that were originally Crown Allotment boundaries
 - The bed is now Crown land, its status is unreserved
 - The low banks are now Crown boundaries, with the Crown as the owner on one side
 - There is also now a Crown boundary in the centreline of the watercourse (whether it is a Parish boundary or not)
 - All of these boundaries are ambulatory
 - Where the Doctrine of Accretion cannot be applied, the *Limitations of Actions Act 1958* may apply in regard to any impact on Crown land
 - This happened AFTER the 1881 gazettal
 - The bed, now Crown land, has had Native Title extinguished as it was once freehold

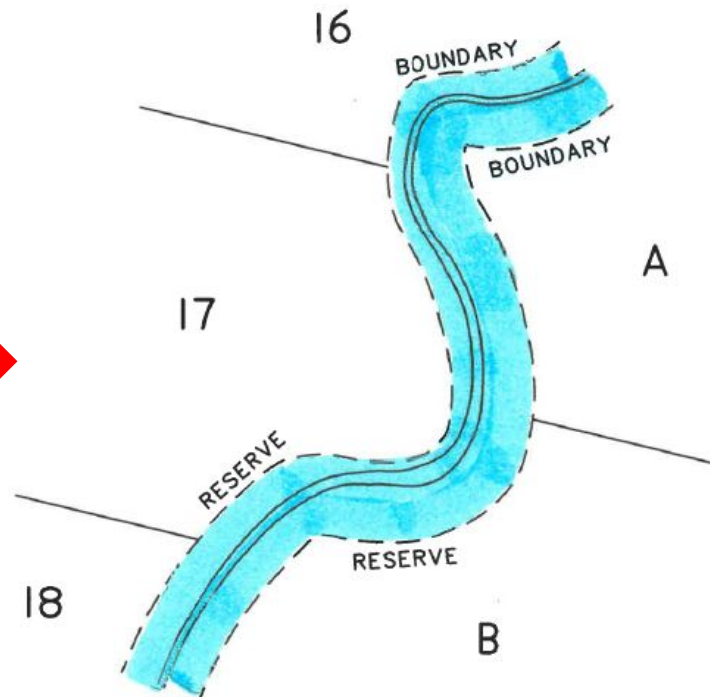
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The Doctrine of Accretion – **Applies**

PERMANENT PUBLIC
PURPOSES RESERVE
Vide GAZ. 81-1389



LAND ADJOINING THE PERMANENT RESERVE
HAS BEEN ALIENATED AFTER 1881.



b-1

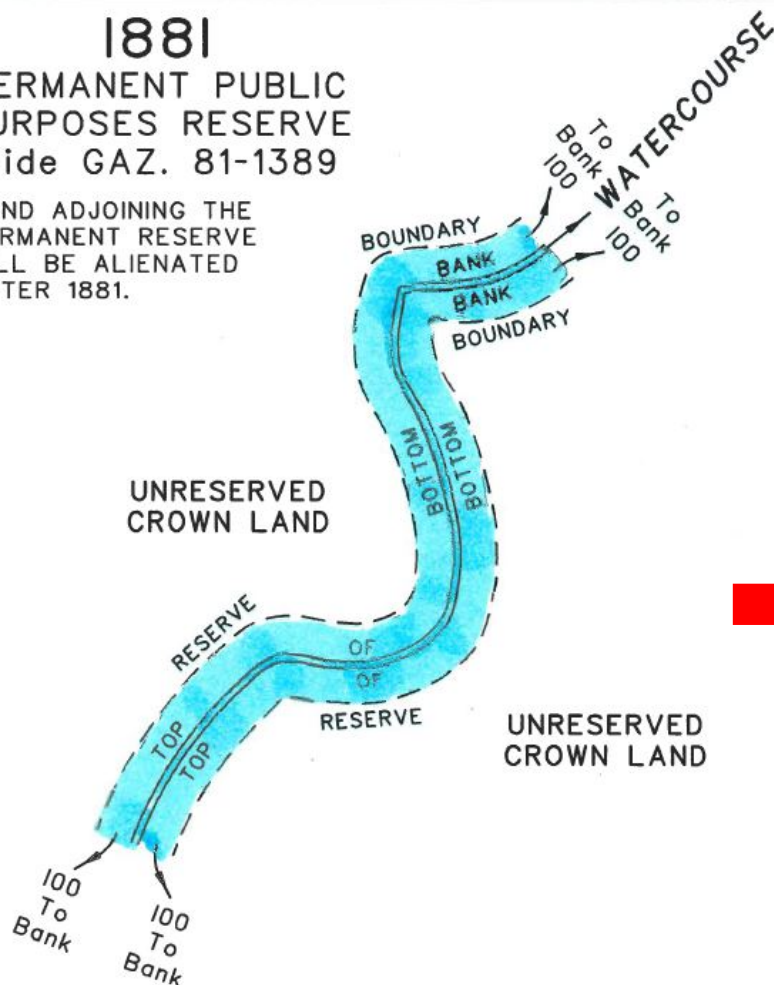
Applies

1881 Reservation & Surveyors – Doctrine of Accretion

1881

PERMANENT PUBLIC
PURPOSES RESERVE
Vide GAZ. 81-1389

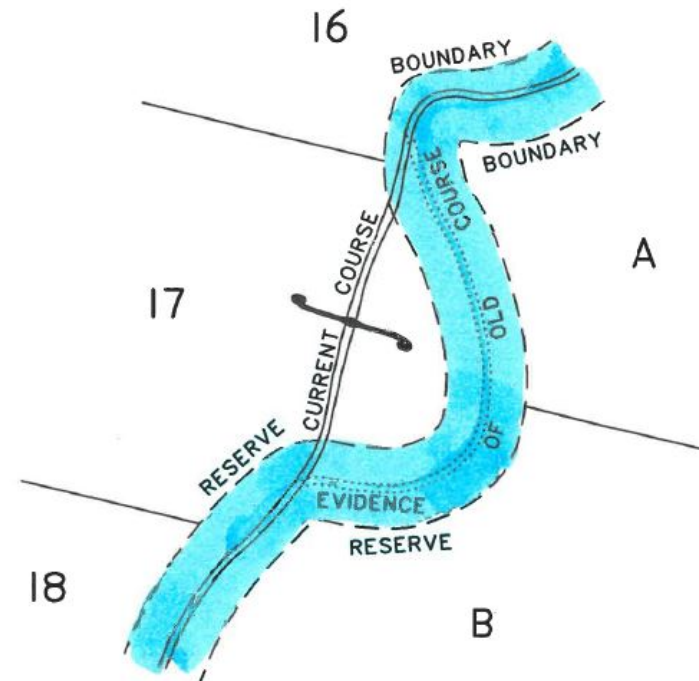
LAND ADJOINING THE
PERMANENT RESERVE
WILL BE ALIENATED
AFTER 1881.



THE RESERVE IS ALL OF THE LAND BETWEEN
THE RESERVE BOUNDARIES, INCLUDING THE
BED OF THE WATERCOURSE.

TODAY

SUDDEN



A SUDDEN BREAKTHROUGH HAS OCCURRED.
THE DOCTRINE OF ACCRETION DOES NOT APPLY.
THE OUTER RESERVE BOUNDARIES REMAIN UN-AFFECTED.
THE FREEHOLD RETAINS OWNERSHIP OF THE BED
OF THE WATERCOURSE. BUT NOT THE WATER!

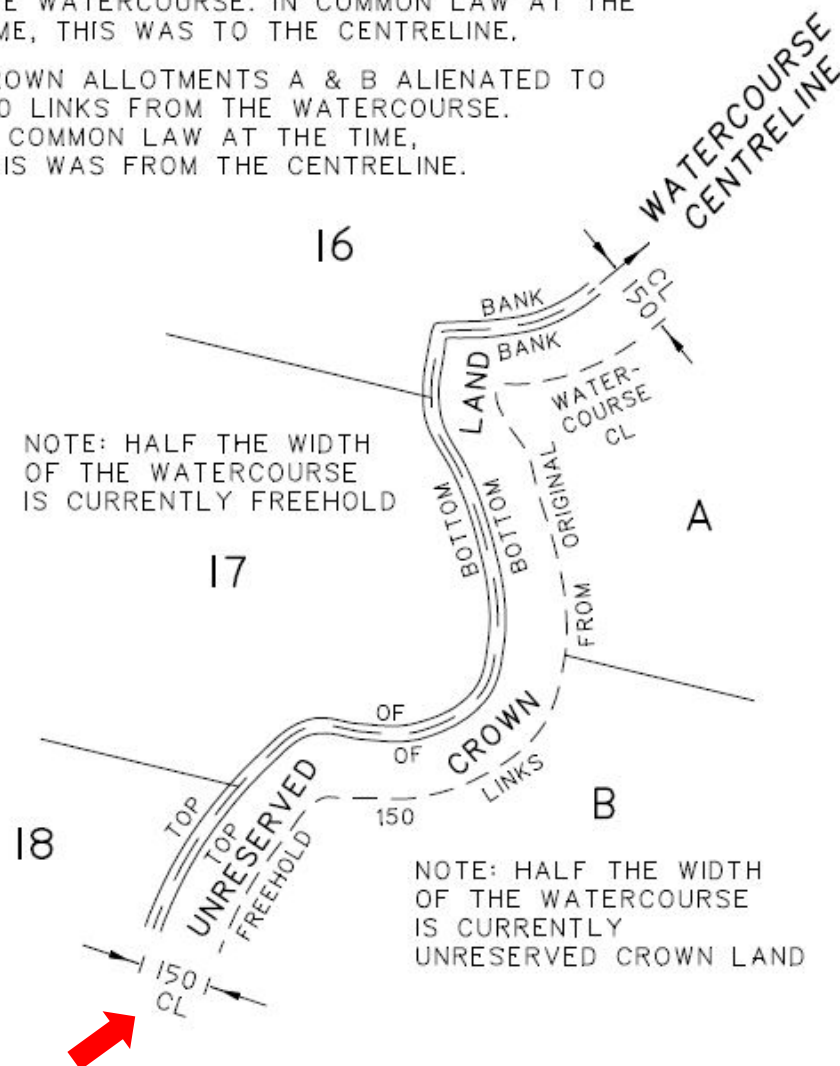
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Example – Land as Granted

PRE 1881

CROWN ALLOTMENTS 16, 17 & 18 ALIENATED TO THE WATERCOURSE. IN COMMON LAW AT THE TIME, THIS WAS TO THE CENTRELINE.

CROWN ALLOTMENTS A & B ALIENATED TO 150 LINKS FROM THE WATERCOURSE. IN COMMON LAW AT THE TIME, THIS WAS FROM THE CENTRELINE.



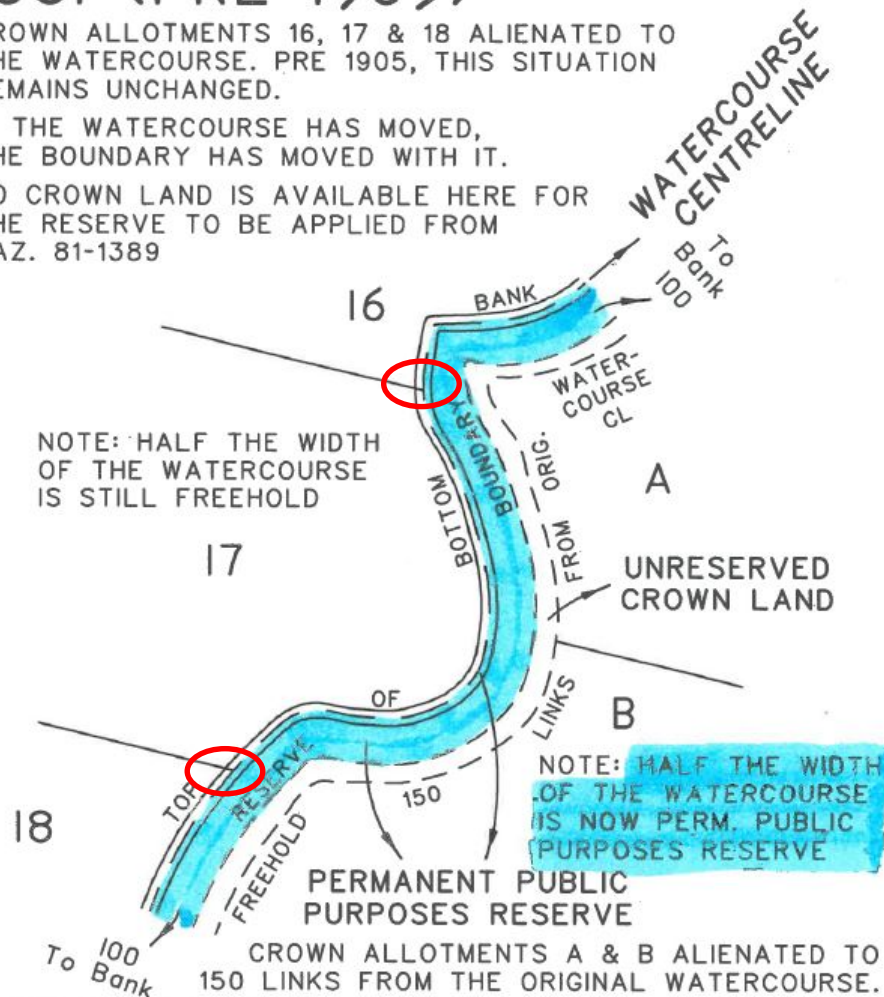
Example – At the time of the Reservation in 1881

1881 (PRE 1905)

CROWN ALLOTMENTS 16, 17 & 18 ALIENATED TO THE WATERCOURSE. PRE 1905, THIS SITUATION REMAINS UNCHANGED.

IF THE WATERCOURSE HAS MOVED, THE BOUNDARY HAS MOVED WITH IT.

NO CROWN LAND IS AVAILABLE HERE FOR THE RESERVE TO BE APPLIED FROM GAZ. 81-1389

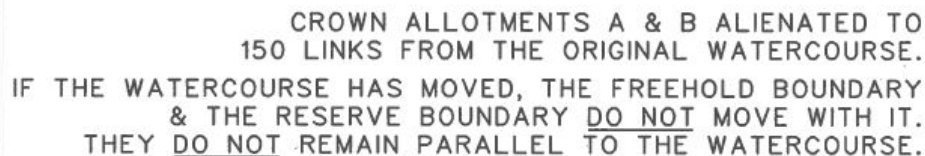


CROWN ALLOTMENTS A & B ALIENATED TO 150 LINKS FROM THE ORIGINAL WATERCOURSE.

IF THE WATERCOURSE HAS MOVED, THE FREEHOLD BOUNDARY DOES NOT MOVE WITH IT.

THE PERMANENT PUBLIC PURPOSES RESERVE IS DEFINED FROM THE BANK & CENTRELINE OF THE WATERCOURSE IN 1881
VIDE GAZ. 81-1389

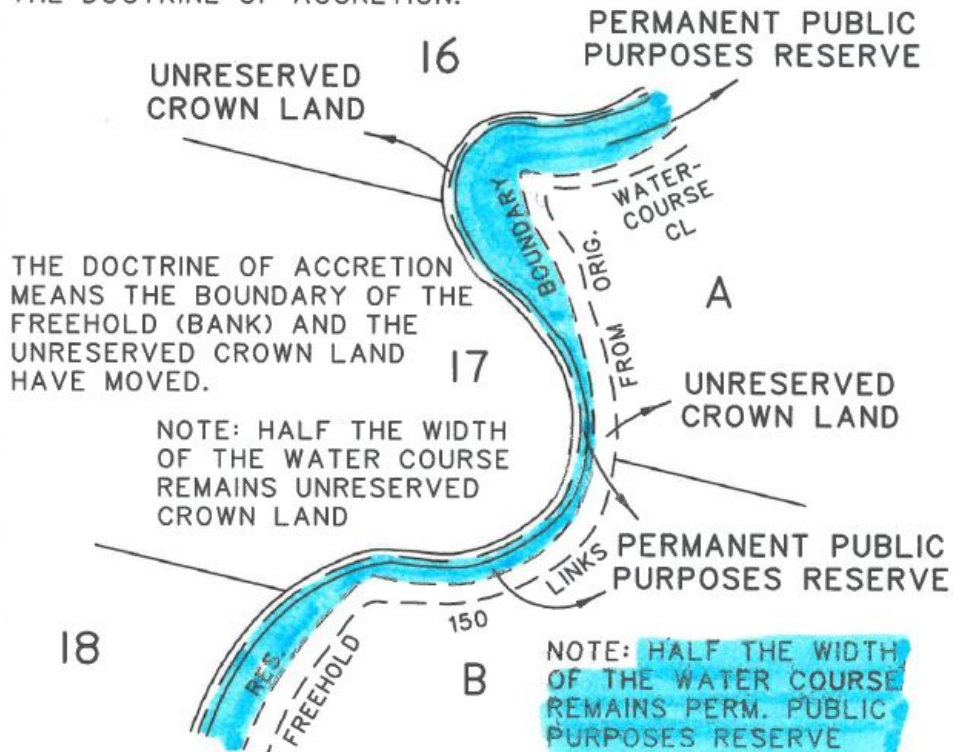
IF THE WATERCOURSE MOVES, THE
BOUNDARY MOVES WITH IT.



Example – The Doctrine of Accretion

TODAY

CROWN ALLOTMENTS 16, 17 & 18 ALIENATED TO THE WATERCOURSE. AFTER 1905, THE FREEHOLD BOUNDARY REVERTED TO THE BANK. THE BOUNDARY IS SUBJECT TO THE DOCTRINE OF ACCRETION.



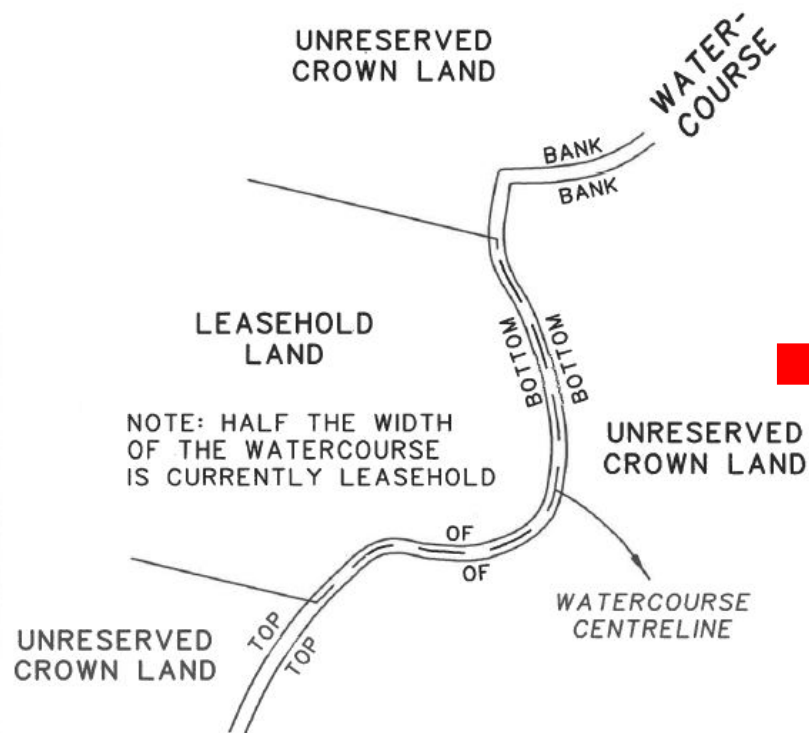
THE DOCTRINE HAS APPLIED TO THE LOCATION OF BOTH BANKS, & HENCE THE CENTRELINE. HOWEVER THE BOUNDARIES OF THE PERM. PUBLIC PURPOSES RESERVE AND THE EASTERN FREEHOLD LAND REMAIN UN-AFFECTED, THEY DO NOT MOVE.

IN PARTS, THE PERM. PUBLIC PURPOSES RESERVE HAS BECOME WIDER & IN PARTS BECOME NARROWER. THE ORIGINAL PERM. PUBLIC PURPOSES RESERVE BOUNDARY REMAINS 100 LINKS FROM THE 1881 BANK POSITION.

Example – Leasehold land

PRE 1881

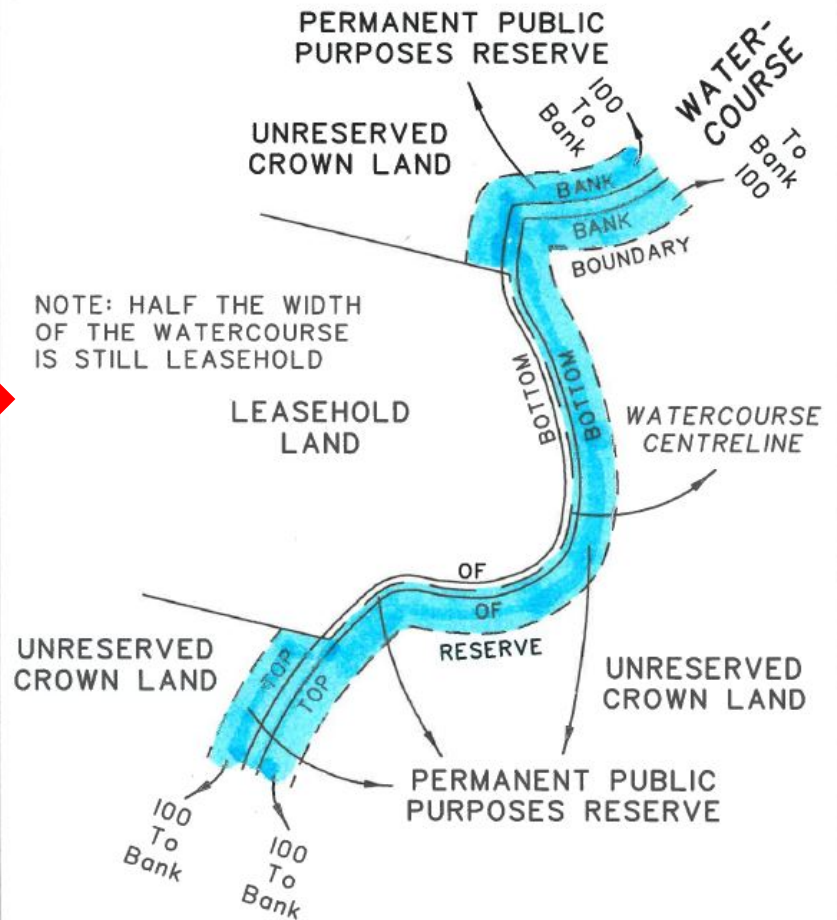
LAND ADJOINING THE WATERCOURSE HAS A "19.20" LEASE OR LICENSE OVER IT.



THE LESSEE HAS RIGHTS IN COMMON LAW TO THE CENTRELINE.

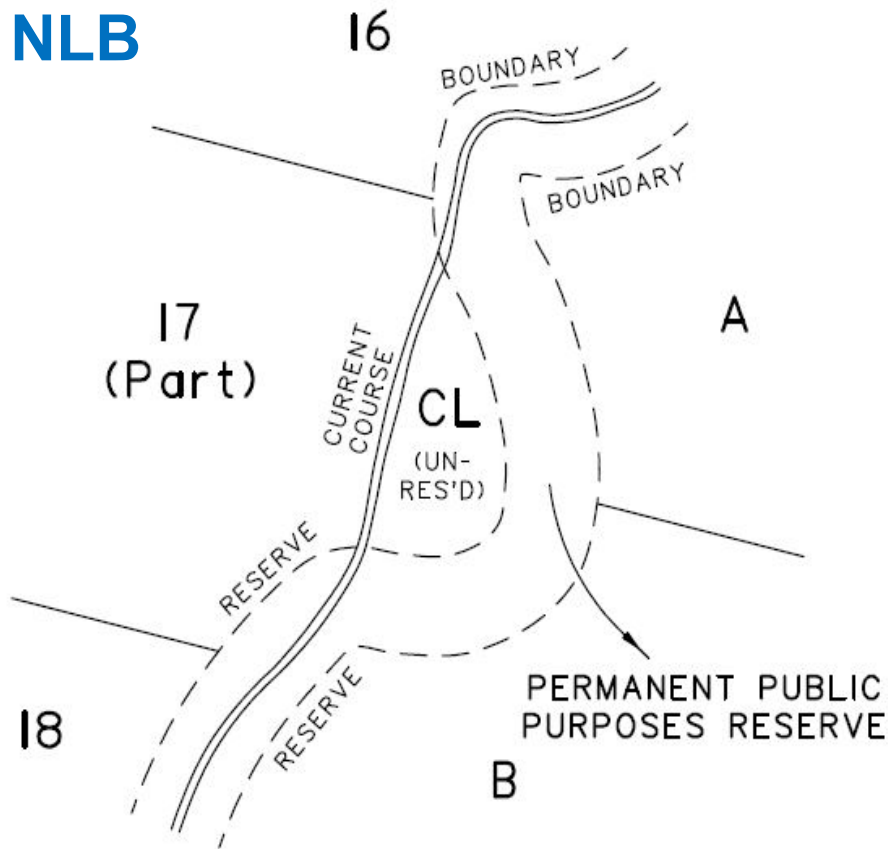
1881

PERMANENT PUBLIC PURPOSES RESERVE
Vide GAZ. 81-1389



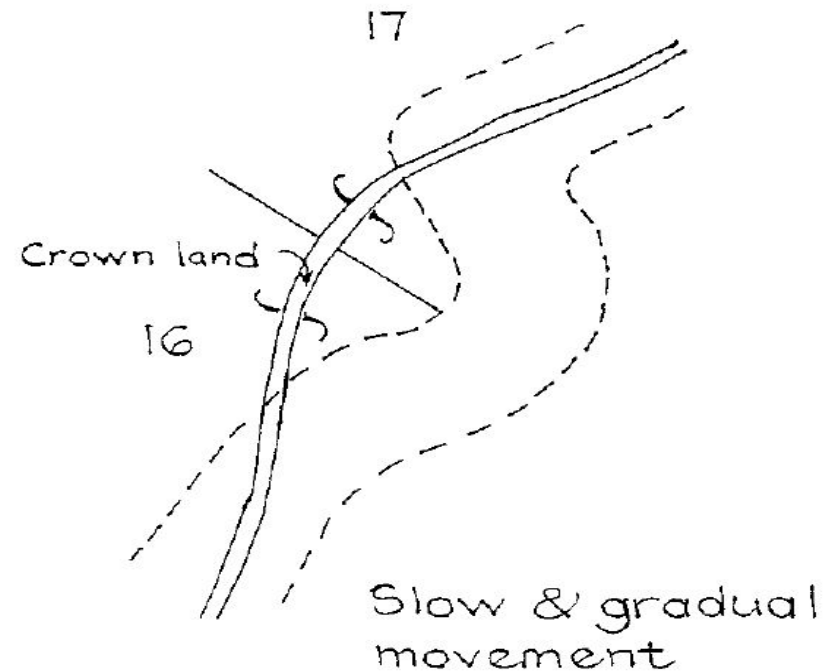
Neville Brayley & Peter Knights comparison

NLB



(fig. 3)

PSK



Peter Knights shows CA 16 as being on either side of the watercourse, but does not describe this scenario in his text. Myself, and some at SGV, consider the vinculum to be in error. This is under investigation and discussion.

He also shows the status of the bed as Crown land. Myself, and some at SGV, consider the bed to be Permanent Public Purposes Reserve. Also being investigated and discussed.

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1881 Impact on the Murray River – a State border issue

Extract from the 1881 Government Gazette

1. *River Murray.*—Along the left bank of the River Murray from its source to the point where the boundary-line between the colonies of South Australia and Victoria intersects the same, all land, the property of the State, within a distance of three chains from the ordinary winter level of the river as confined by the said left bank, and as regards the several and branches leaving and re-entering that river on its left bank, the beds of the same, and all lands of the State within a distance of two chains from either bank of the said and branches measured from the winter level of the water confined within the said banks.

1881 Impact on the Murray River – a State border issue

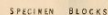
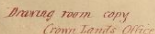
- The relevant highlighted points are:
 - The property of the State
 - Distance of three chains
 - From the ordinary **winter** level confined by the **left bank**
- The High Court of Australia in 1980 ruled the boundary between the States of Victoria and NSW as the top of the high left bank of the Murray River

Therefore:

- Unless the water's edge of the ordinary winter level coincides with the top of the high bank –
 - The land between the ordinary winter level and the top of the high bank is not in Victoria. It is in New South Wales
 - Therefore it is not reserved land in Victoria, and
 - Therefore the width of the Reserve along the Victorian side of the Murray will be **LESS** than three chains wide

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File: Wisc22_1



Showing the manner in which knowledge can be obtained.
 No class is to be taken as final.
 Thought of average class in this question is to strongly condemn it.
 The conditions in the future, time of construction, experimental knowledge
 to be made in the country lands.
 The title is to be given of the same time, however, when the country lands

Specification for the guidance of Government Surveyors in the preparation of all original plans on the scale of four inches to one mile, and under

Scale Survey of Agricultural or trading lands intended for sale to be plotted to the scale of four inches to one mile.
Survey of Roads, Canals, Rivers, and Creeks to be plotted to the scale of two inches to one mile.

Specimen floor Plans on the first inch scale to be prepared in exact accordance with the Specimen floor and the Specification, and particularly so as regards the size, character, and strength of the letters and figures and thickness of lines, plans on smaller scales to have proportionate dimensions as regards the height and thickness of letters and figures and strength of lines.

The figure denoting the number of sections is to 5½ chains high
allments and across 3 chains

and these striking bearings and distances of sections and road lines to be 1 1/2 chains high, the perpendicular height being always understood.

Names of Townships. Rivers, Roads, Wells, Mills, and if all important or distinctive features to be written on these 3 chains high - such not to apply to other Coats, Mills, &c. to be considered as general notices -

General Writing
size of letters

to good Agricultural Land on the Specimen plan.
Parish names to be only written upon the face of a plan where
there are more than one parish on the same survey, to be written
horizontally & begin with the PARISH

Color of letters, figures and lines All writing and figures on plans to be in strong black Indian ink only. All area and road lines to be of the least thickness as on Spaxman plan and to be in strong Indian ink only, including all lines on bridge bodies.

and to in every Indian not only including all those in United States.

Trigonometrical lines Trigonometrical: Traverse, and those lines of Construction to be shown on Blue

Coastors The traverses in every case to be open, detailed at every 1/2 of a mile, in gently undulating Country, and 1/4 of a mile, in

Recess & Creek
In many of the high hills of each Continent where the surrounding country is level, there is a part of its course through the heavy
Recess and Creek where occupying only the 1/2 of an inch in width on the plan to be
shown by one strong black line, a Indian ink, where exceeding 1/2 of an inch in
width to be shown with two lines, where a double line, 1/2 of an inch.

Water Surface Lakes, Lagoons, and generally permanent water surfaces to be shown by their
boundaries above, with a black line shaded from the left thus Lake

Lake
 a low intensity according to their nature, particular care to be taken to preserve an
 interval of at least 1/2 of an inch between all parallel lines
 Thick boundaries to be drawn the

Parcel Boundaries shall boundaries to be shown there-----and actually on the boundary indicated, not inside it. When formed by a river or creek, the above work to be sponsored with, and indicated, the words Parcel Boundary to be written 2 chains high along the line. Parish. Bayou.

Townships
Rush Roads

Magnetic Aurorian The Magnetic Aurorian to be shown as an Aurora Borealis plant with the true Aurorian.

The title, seal, & Surveyors signature to be all together and of the size & character

and in all respects as on *Specimen flax*; to be placed in the most convenient position on glass, & near the Survey with a view to include them in any photographic reduction; the Surveyors signature to be written at least 2 lines high, and under the Scale.

portion of plane to be North to South - All plane to be laid down, or so to be with the North side upwards, and to have the wing as much as possible from west to east - Road, Telegraph, or such like plane only to be accepted from this rule.

Boundaries of Rivers. It may be of Country, lands to show all boundaries of Rivers that intersect or lie adjacent
marked by a faint dotted line, when not otherwise indicated by Rocks, Roads or other well defined
marks on plan, the words Boundary of River to be written along said Boundary as in accompanying plan

General Remarks All plans of surveys sent to the Surveyor General's Office from the field, to be on drawing paper only, and not on tracing paper or cloth, to be forwarded rolled up and not folded, such precaution being necessary to the satisfactory character of photoduplication.

Great care to be taken that all the writing and figuring be kept well apart, & not crowded so as to interrupt other work, nor to be written near or between the lines showing

these Road 2 Chains wide ^{100' 0" 12.00} The exact thickness of the line letters
& figures as shown on the Specimen to be most carefully preserved, as also intense
blackness in them. The preparation of original plans in the manner

above specified is absolutely necessary to ensure their successful reduction and lithographing, by the process of Photo Lithography, which has been adopted in the Surveyor General's Office.

1859 Drafting Specifications

Specification for the guidance of Government
Surveyors in the preparation of all original plans
on the scale of four inches to one mile, and under.

Surveyors are requested
to adhere strictly to the above
example in drawing & writing
so that their plans may be
reduced to a small scale by
means of Photographs
Chas. W. Lister
11/9/59
Sur. Genl.

1859 Drafting Specifications

Scales

Specimen plan

Size of letters & figures

Rivers & Creeks

Water Surfaces

Swamps

Parish Boundaries

Rivers, and Creeks, where occupying only $\frac{1}{40}$ th of an inch in width on the plan, to be shown by one strong black line in Indian ink, where exceeding $\frac{1}{40}$ of an inch in width to be shown with two lines casting a shadow from the left.

Lakes, Lagoons, and generally permanent water surfaces to be shown by their boundaries alone, with a black line shaded from the left thus.

Swamps to be shown as on the Specimen plan with more or less intensity according to their nature, particular care to be taken to preserve an interval of at least $\frac{1}{40}$ of an inch between all parallel lines.

Parish boundaries to be shown thus and exactly on the boundary indicated not beside it. When formed by a river or creek, the above mark to be dispensed with, and instead, the words Parish Boundary to be written 2 Characters high along the River or Creek, thus

Lake

Parish Boundary

Some don't care less where the Reserve is. Only where their next feed is!

