

10.3 ESPLANADE RESERVES AND ESPLANADE STRIPS

10.3.1 BACKGROUND

10.3.1.1 Legislation

With respect to the coast, and the margins of waterways, Section 6 of the Resource Management Act 1991 directs local authorities to:

"... recognise and provide for the following matters of **national importance**:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers."

Hauraki District contains two lakes (Gilmour Lake in Waihi and Patetonga Lagoon near Patetonga) within its boundaries, numerous rivers and streams, and two large sections of coastline.

The Act provides for the setting aside of esplanade reserves, esplanade strips and access strips as measures that can be taken to implement the above matters of national importance.

It should be recognised that there are a range of other methods included in the District Plan that provide for the achievement of these matters. These methods are:

- ☞ Protective zoning of areas of Conservation Estate.
- ☞ Policy Areas in key locations eg Karangahake Gorge, Coastal Environment.
- ☞ Rules eg setback of buildings from watercourses, disposal of effluent, erosion hazard etc.

Methods outside the District Plan to implement the above matters of national importance, include Council ownership and management of reserves, public services (eg water supply, sewage treatment and disposal, sanitary landfill), assisting with Council or QE II covenants to protect bush, and supporting community groups (eg Whiritoa Beachcare).

10.3.1.2 Esplanade Reserves, Esplanade Strips and Access Strips

While esplanade reserves have been in existence and used as a method of securing public ownership and access to the margins of water bodies, the Resource Management Act 1991 has also introduced the mechanism of esplanade strips and access strips.

The three principal purposes of both the esplanade reserves and strips can be summarised as:

- ☞ Protection of conservation values.
- ☞ Public access.
- ☞ Public recreation compatible with conservation values.

The introduction of the **esplanade strip** overcomes some of the limitations and costs associated with esplanade reserves. Esplanade strips are a legal instrument registered against the land, which act in a similar manner to an easement. Strips are not required to be surveyed, the land remains in private ownership, the strip moves with the changes in the water body boundary, and there is flexibility to create prohibitions and other arrangements to suit the purpose and the circumstances of the strip.

Access strips are an easement arrangement designed to obtain access from public places (eg roads, recreation reserves) over private land to an esplanade reserve or strip. Such easements can

only be arranged through negotiation between the landowner and the public agency. They are not instruments that can be imposed as a condition of a subdivision or resource consent.

10.3.1.3 Existing Situation

Many of the margins of water features in the District have been modified. In some cases, the modifications have been significant (eg stopbanking of the Waihou and Piako Rivers), and the value of any reserve or strip for conservation purposes has been significantly reduced. However, in other situations the margin of the water feature is largely in a natural state and has conservation significance (eg parts of the eastern coastline, parts of the Ohinemuri River).

The Waikato Regional Council owns the stopbanks along the major rivers and the Firth of Thames, and they are also designated for river control purposes in the District Plan. These banks offer little in the way of conservation values, but they have the potential to provide good access.

As a result of previous subdivisions, a number of esplanade reserves have been set aside within the District. There are also in existence a number of marginal strips, particularly along the eastern coastline. Along this coastline, these strips and esplanade reserves are contained within the Coastal Environment Policy Area.

Streams and rivers within the Department of Conservation Estate, have been zoned either Conservation (Indigenous Forest) or Conservation (Wetland). These zonings, and the fact that the land is in public ownership, offer protection of the water margins without the need to secure public rights through easements.

10.3.1.4 Proposed Approach

Hauraki District Council is developing a detailed strategy which will determine where, in what circumstances and what order of priority reserves and strips will be taken and/or negotiated. A detailed strategy is currently being prepared as part of the Community Recreation Facilities Development Plan, which also includes the development of all the recreation and reserve needs of the community for the next 10 year period. This Plan will be completed in time for notification by Council at the same time as the Proposed District Plan is notified.

Additional work has been undertaken to determine the strategy for securing esplanade reserves and strips on those water margins where there is a conservation, rather than a recreation value. This work will be included within the Community Recreation Facilities Development Plan preparation.

The current general approach can be summarised as follows:

1. Esplanade reserves will be taken at all opportunities along the eastern coastline. The Reserve (Passive) and Reserve (Active) zones are shown on the Planning Maps applying to existing and proposed reserves and marginal strips in this area. (Additional zones may be applied as a result of the work in the Community Recreation Facilities Development Plan).
2. In the Karangahake Gorge Scenic Corridor Policy Area and eastwards to and within Waihi Town, esplanade reserves will be taken at every opportunity along the banks of the Waitawheta and Ohinemuri Rivers. In addition, part of the Waitekauri and Otahu Streams have been identified for the taking of Esplanade Reserves. The Reserve (Active) and (Passive) zones are shown over the existing and proposed strips.
3. On the margins of rivers that have been subject to flood control works and are under the control and management of the Waikato Regional Council, no esplanade reserves will be required. In those situations where public access is identified as being desirable, Council will either:
 - ☞ Create an esplanade strip; or
 - ☞ Endeavour to ensure that the lease agreements between the occupier and the Waikato Regional Council contain provision for public access to be provided, as long as it does not unduly interfere with farm operations.

In either case, it may also be necessary to negotiate an access strip(s) from roads and other public places across the balance of the property to get to the esplanade strip or lease land.

4. In those areas along the Firth of Thames where either public access and/or conservation values are of importance, either esplanade reserves or strips will be taken or access strips obtained by negotiation.
5. Access strips will be obtained by negotiation in those situations where existing esplanade reserves are not linked to an adjoining public place, and access has been identified as being desirable to enable an appropriate use of the esplanade reserve to be achieved.
6. As one of the ways in which to take into account the principles of Te Tiriti o Waitangi, Council will not seek to obtain esplanade reserves over Maori Land. Instead, Council will seek to secure esplanade strips or access strips or other "easement" instruments in the case of Maori Land. Council accepts that the alienation of Maori Land is to be avoided.
7. Council will use the statutory provisions of Sections 108 and 229 - 237H of the Resource Management Act 1991, to take esplanade reserves on subdivisions and developments, where such a reserve has been identified as being desirable in the Community Recreation Facilities Development Plan and/or on the Planning Maps.
8. Negotiation, compensation, purchase and voluntary arrangements for reserves or strips will be undertaken in those situations where access is desirable.

10.3.2 RESOURCE MANAGEMENT ISSUES

In securing esplanade reserves and strips, and access strips a balance must be achieved between:

1. The legislative requirement that specified environments be preserved;
2. Community desires to have access to and use of those environments; and
3. The property "rights and responsibilities" of landowners to use their land.

The cost of development on the environment should be borne equitably between the developer and the community.

10.3.3 ANTICIPATED ENVIRONMENTAL RESULTS

Preserving specific environments along the coast, rivers, streams and other water bodies from adverse effects of development and subdivision.

Providing appropriate public access to environments that the community use for recreation purposes, and which contribute to the community's social, economic, and cultural wellbeing and health.

10.3.4 OBJECTIVES AND POLICIES

Objective 1

To implement the "Matters of National Importance" set out in Section 6 of the Act, particularly Sections 6(a) and (d).

Objective 2

To maintain and enhance public access to the margins of the water bodies in a manner that is compatible with the preservation of conservation values and does not unreasonably interfere with the landowner's ability to use and "enjoy" the land.

Objective 3

To make provision for public recreation on esplanade reserves, where this is compatible with the maintenance of conservation values.

Policies for All Objectives

Objectives 1,2 and 3 will be achieved by implementation of the following policies:

1. Indicating in the Community Recreation Facilities Development Plan those areas where additional land will be taken as esplanade reserve and by zoning such areas as Reserve (Passive) and (Active) on the District Planning Maps.
2. Liaising with the Waikato Regional Council, lessees and landowners in those situations where stopbanks have been constructed and public access is desirable. The purpose is to include in the lease agreements, arrangements for public access and enjoyment of the river and coastal margins for recreation activities. As the land is already in public ownership, there is no requirement to acquire the land.
3. Using the legislative opportunities in the Resource Management Act 1991, to secure esplanade reserves and strips on subdivision and developments in those situations where esplanade reserves or strips have been identified on the Planning Maps as being required.
4. Where subdivision or development occurs and there is no "as of right" legislative ability to acquire esplanade reserves or strips without compensation, Council will negotiate to either have the land vested or set aside on a voluntary basis without compensation. In the event that a voluntary agreement cannot be reached, Council will negotiate to purchase the land or secure an access strip (and compensate the owner).
5. Liaising with statutory organisations (eg Department of Conservation) and community groups with an interest in the resource (eg fishing clubs, conservation groups, canoe clubs), to determine the locations where access, reserves and strips are needed for recreation purposes.
6. Setting up community groups to assist in the management and control of particular reserve(s). An existing example is the Beachcare group at Whiritoa.
7. Not taking esplanade reserves where the land is Maori Land. Rather, Council will seek to obtain voluntary agreements with the tangata whenua of the land where esplanade strips and access strips are necessary.

Reasons for All Objectives and Policies

1. There are a variety of ways in which esplanade reserves and strips, and access strips can be used to achieve the matters of national importance specified in Part II of the Resource Management Act 1991.
2. A "targeted" approach is required to ensure that public funds are spent where they are most required to achieve the national planning policies. Further, any limitation to the landowners use and enjoyment of the land should be implemented only where there are clearly defined reasons.

3. Community responsibility for environmental enhancement can be encouraged by ensuring the community has a "stake" or interest in securing that outcome. Savings in Council funds can also result from community involvement.

10.3.5 METHODS TO IMPLEMENT OBJECTIVES AND POLICIES

The principal method by which Council will implement the above objectives and policies through the District Plan is by the use of zones and rules. In addition, methods outside the District Plan can be relied on, including legislation (Resource Management Act 1991) and other documents (eg Community Recreation Facilities Development Plan).

Zoning esplanade areas as Conservation (Indigenous Forest), Conservation (Wetland), Reserve (Passive) or Reserve (Active) also protects the margins of rivers, lakes and the sea.

Using the overlay of the Coastal Environment and the Karangahake Gorge Scenic Corridor Policy Areas, introduces additional management and control of development in these areas.

The Community Recreation Facilities Development Plan sets out the strategy and the areas where acquisition is required to ensure preservation of conservation values, and to provide access and recreational use of the water resource. This is complementary to the zonings shown on the District Planning Maps. This Development Plan is continually monitored and updated to ensure the programme of land acquisition and management is meeting the needs of the environment and the community. Changes to the District Plan will need to be carried out to keep the District Plan and the Community Recreation Facilities Development Plan coordinated.

Statutory organisations and community interest groups can be used to assist in the management and control of the resources.

10.3.6 RULES

1. At the time of subdivision and/or development, an esplanade reserve of 20 metres width shall be surveyed and vest with the Hauraki District Council in the location and to the extent shown as either Reserve (Passive) or (Active) on the Planning Maps, in accordance with the provisions of Section 229 - 237H of the Resource Management Act 1991. This is to apply irrespective of the size of the allotments in the subdivision or whether the subdivision is part of a road stopping procedure.
2. Where an esplanade reserve could be required under the provisions of the Resource Management Act 1991 or the Local Government Act 1974, but is not required under 1. above, then no esplanade reserve is required (ie Section 230 of the Resource Management Act 1991 and Section 345(3) of the Local Government Act 1974 do not apply).
3. Where there are legal impediments (eg land tenure, existing encumbrances) to the land vesting as esplanade reserve, or Council is not financially in a position to pay for any additional land, Council will accept or seek to secure an esplanade strip instead. The strip is to be 20 metres wide and the contents and method of registration of the registered instrument are to be to the satisfaction of Council.
4. Any esplanade reserve or strip that Council wishes to secure that is in excess of that required in 1. above (width, location or extent), may only be obtained by negotiation and agreement between the parties concerned.
5. An application for a reduction in or a waiver of a requirement for an esplanade reserve or strip is a discretionary activity (notified) and shall be assessed in relation to the following criteria:

- (i) The objectives and policies of Section 10.3.4, the objectives and policies of Section 10.2.4 - Financial Contributions and the zone in which the land concerned is located.
- (ii) The extent to which the natural functioning of the water body, water quality, and land and water based habitats will be affected by any reduction in the width, size or non provision of the reserve or strip.
- (iii) The extent to which the public's access and recreational enjoyment of the reserve or strip is reduced or removed.
- (iv) The degree of protection of the natural values associated with the reserve or strip that will remain.
- (v) Whether the effects of natural hazards on the conservation values of the water margin will be compromised.
- (vi) The degree to which the purpose of the reserve or strip can be or is already achieved by other mechanisms (eg covenants, rules in the District or Regional Plans, conditions of resource consents).
- (vii) Whether the loss of the reserve or strip will severely restrict the landowner in carrying out a viable activity on the balance area.
- (viii) Whether the presence of the public will significantly interfere with the legitimate land use activities on the balance area, in terms of safety, security, animal wellbeing, amenity (particularly residential) in a manner that cannot be compensated by other actions.