

7.3 RIPARIAN AREAS & ESPLANADES

7.3.1 BACKGROUND

- (1) Amongst other matters of national importance, Section 6 of the Resource Management Act 1991 (RMA) requires recognition of and provision for:

["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;" (s6(a))

“the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers” (s6(d))]

- (2) Riparian areas are the interface between land and water bodies. Their importance not only relates to their own intrinsic ecological functions and values, but also relates to the ability of the margins to avoid, remedy or mitigate the adverse effects of land based activities on the water quality and the aquatic environment.
- (3) Hauraki District contains coastal, river, stream, wetland and lake riparian areas. In addition, the Plains area of the District (in particular) is bisected by a number of artificial canals and drains, as well as the river control works of the Waihou and Piako Rivers. For these canals, drains and river control works, the potential for the preservation of the natural character of the margins has to be considered in light of the important economic and safety function that they perform for land drainage and flood protection. The development, use and maintenance of these margins for flood control purposes cannot be considered "inappropriate" in all circumstances.
- (4) 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.
- (5) 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, where these strips, as well as esplanade reserves, are contained within the Coastal Zone.
- (6) Streams and rivers within the land managed by the Department of Conservation 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 reserves or strips.
- (7) Council has adopted a targeted approach to securing the protection of riparian areas which is as follows:
- (a) Esplanade reserves will be taken at all opportunities along the eastern coastline.
- (b) In the Karangahake Gorge Zone and eastwards to the eastern side of Waihi Town, esplanade reserves will be taken at every opportunity along the banks of the Waitawheta, Waitekauri and Ohinemuri Rivers. In addition, areas along a number of other key streams and rivers have been identified for the taking of esplanade reserves.

- (c) 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:
- (i) Require the creation of an esplanade strip; or
 - (ii) 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.
- (d) In those areas along the Firth of Thames where either public access and/or conservation values are identified in the future as being of importance, either esplanade reserves or strips will be taken or access strips obtained by negotiation.
- (e) Access strips will be obtained by negotiation in those situations where existing esplanade reserves are not linked to an adjoining public place.
- (f) 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.
- (g) Council will use the statutory provisions of the RMA to take esplanade reserves on subdivisions, where such a reserve has been identified as being desirable on the Planning Maps.
- (h) Negotiation, compensation, purchase and voluntary arrangements for reserves or strips will be undertaken in those situations where access is desirable.

7.3.2 RESOURCE MANAGEMENT ISSUES

- (1) Maintenance and protection of existing flora of value and indigenous fauna associated with riparian areas.
- (2) The use of riparian areas for the protection of aquatic environments from the adverse effects of land use activities (eg sedimentation, water enrichment, bacterial contamination), and providing public access without causing the destruction of the intrinsic values of the riparian areas themselves.
- (3) Some water bodies have been realigned, modified or were created for and continue to serve an economic and safety function, and those functions must continue to be maintained. Riparian areas along these water bodies do not have "natural character" but may support indigenous flora and/or fauna of value.
- (4) The need to actively manage riparian areas (eg by planting, fencing, removal of weeds, removal of wind throws), especially where the riparian area is in private ownership and is

actively being used by the landowner, and the cost and resources necessary (for the land owner) to carry out that management.

- (5) In securing esplanade reserves and strips and access strips a balance must be achieved between:
- (a) The legislative requirement that specified environments be preserved;
 - (b) Community desires to have access to and use of those environments;
 - (c) The property "rights and responsibilities" of landowners to use their land.

The cost of securing public access and development of esplanade reserves and strips should be borne equitably between the developer and the community.

7.3.3 OBJECTIVES AND POLICIES

(1) OBJECTIVE 1

To sustainably manage the margins of water bodies and coastal water to maintain or enhance natural character, indigenous biodiversity, water quality, and aquatic and adjoining terrestrial habitats.

(2) OBJECTIVE 2

To maintain and enhance public access to the margins of 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.

(a) Policies

Objectives 1 & 2 will be achieved by the implementation of the following policies:

- (i) Liaison 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.
- (ii) Use the legislative opportunities in the RMA to secure esplanade reserves and strips on subdivisions.
- (iii) Liaison 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.
- (iv) 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.
- (v) 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 esplanade strip (and compensate the owner).

- (vi) Use of a range of regulatory provisions (eg rules in the District and Regional Plans) and incentives (eg support for Whiritoa Beachcare) to manage riparian areas.

(b) Reasons for All Objectives and Policies

- (i) 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 2 of the RMA.
- (ii) 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 landowner's use and enjoyment of the land should be implemented only where there are clearly defined reasons.
- (iii) 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.

7.3.4 ENVIRONMENTAL RESULTS

- (1) Water quality, aquatic habitat, aquatic biodiversity and life supporting capacity of water bodies maintained or improved.
- (2) Indigenous biodiversity and terrestrial habitats of riparian areas maintained or improved.
- (3) Appropriate public access secured to environments that the community use for recreation purposes, and which contribute to the community's social, economic, and cultural well-being and health.

7.3.5 RULES

- (1) At the time of *subdivision* 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 on the Planning Maps, in accordance with the esplanade reserve provisions 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 Rule 7.3.5(1) above, then no esplanade reserve is required (ie Section 230 of the Resource Management Act 1991 does 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 with the

agreement of the land owner. 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 Rule 7.3.5(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*.

7.3.6 ASSESSMENT CRITERIA FOR DISCRETIONARY ACTIVITIES

- (1) An application for a reduction in or a waiver of a requirement for an esplanade reserve or strip shall be assessed in relation to the following criteria:
 - (a) 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 or size or non-provision of the reserve or strip.
 - (b) The extent to which the public's potential access and recreational enjoyment of the reserve or strip will be reduced or removed.
 - (c) The degree of protection of the natural values associated with the reserve or strip that will be able to be retained.
 - (d) Whether the potential *natural hazard* effects from use of the water margin will compromise conservation values.
 - (e) 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).
 - (f) Whether the removal of the land required for the reserve or strip will severely restrict the landowner in carrying out a viable activity on the balance area.
 - (g) 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 well-being, *amenity* (particularly residential) in a manner that cannot be compensated by other actions.