

2013

# Plan Topics

Esplanade reserves, esplanade strips  
and access strips



## Esplanade reserves, esplanade strips and access strips

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This guidance only includes changes to the RMA as a result of the Resource Management Amendment Act 2013 that are already in force. Part 3 of the Amendment Act will come into effect on 3 March 2015, which is 18 months from the date of Royal Assent (3 September 2013). For more information about the amendments please refer to the Ministry for the Environment's – Fact Sheets available from the [Ministry's website](#).

This note provides guidance on the development and implementation of plan provisions on esplanade reserves, esplanade strips and access strips (collectively referred to as esplanade areas).

The note outlines the origins, purpose, and advantages and disadvantages of each type of esplanade area. Guidance also covers the instruments for creating esplanade areas, examples of techniques and methods used to implement them, (including regulatory and non-regulatory methods) and when and how compensation is payable.

### Guidance note

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## Origins and importance of esplanade reserves

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Esplanade reserves, esplanade strips and access strips, collectively referred to as 'esplanade areas' in this note, are statutory mechanisms to protect riparian and coastal margins. Riparian margins are strips of land identified along the edges of natural watercourses including streams, lakes and wetlands. The protection of these margins helps to conserve environmental values and provides opportunities for public access and recreational use, as provided for in s6(d) of the Resource Management Act 1991 (RMA).

There is wide variability in the application and implementation of esplanade areas by territorial authorities. The intent of this guidance note is to provide information on the purpose of esplanade areas and to assist in developing provisions in district plans.

### Origins of esplanade areas

Historically some members of the public have had an expectation of unrestricted access to and along water margins, which is derived from the concept of the Queen's Chain (ie, a 20-metre strip along the edge of major rivers, lakes and the coastline). In reality this understanding is more of an ideal, as full access rights to land along all rivers, lakes and the coast have never been established in law. Access along the coastline and riverbanks currently comprises a piecemeal collection of public strips including reserves, roads and other classes of land in Crown, local authority or private ownership.

The requirement to retain land in public ownership when it is disposed of by the Crown is now found in the 'marginal-strip provisions' of the [Conservation Act 1987](#) and the [Conservation Law Reform Act 1990](#).

Rural subdivision of private land was controlled under the Lands Acts until the Land Subdivision in Counties Act 1946. This Act required a 66-foot strip of land alongside water bodies to be vested in the Crown as reserve, on lots smaller than 10 acres. Until the 1970s there were no esplanade reserve requirements on the subdivision of private land in cities and boroughs, and in counties the requirements did not apply to lots over 10 acres.

Requirements relating to the subdivision of private land, including esplanade reserves, were consolidated in 1979 into a new Part of the Local Government Act 1974 (LGA 1974) but were subsequently repealed by the RMA. Although the RMA introduced provisions regarding the creation of esplanade reserves at the time of subdivision (specifically s77 and s229-237), many of the features of the former LGA 1974 were retained including:

- the 20-metre reserve width
- the 8-hectare and 3-metre average width minimum criteria for taking reserves along lakes and rivers, respectively.

The principal changes introduced by the RMA were:

- the requirement to provide esplanade reserves without compensation from allotments over 4 hectares



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- the ability for territorial authorities to modify the requirements for esplanade reserves through district plans - territorial authority decisions on waivers and reductions previously had to be approved by the Minister of Conservation.

In 1993 esplanade provisions in the RMA were substantially amended to address the onerous impact of the original provisions on land owners. The amendments included the introduction of esplanade strips and access strips, and removal of the requirement to provide esplanade reserves without compensation from allotments over 4 hectares.

In defining the purpose of esplanade areas under the RMA, concepts including the preservation of conservation values and the provision of public access and recreational use were borrowed from existing legislation including the [Conservation Act 1987](#), [Conservation Law Reform Act 1990](#) and [Reserves Act 1977](#).

### Why esplanade areas are important

Esplanade areas are important for several reasons. They can:

- provide public access to and along rivers, lakes and the coast
- enable public recreational use of the esplanade area (where this is compatible with conservation values)
- contribute to the management of natural hazards (eg, stream bank and coastal margin erosion, flooding)
- protect the natural character of coastal and riparian margins
- protect and enhance aquatic habitats and riparian ecosystems and help to improve water quality
- provide for the relationship of Maori with their taonga (eg, protection of wahi tapu) and protection of protected customary rights (eg, gathering of mahinga kai)

These reasons are highlighted in the RMA under s6 as matters of national importance, and the purposes of esplanade reserves and strips under s229.

The creation of esplanade areas can also contribute to achieving objectives and policies of the [New Zealand Coastal Policy Statement 2010](#) (NZCPS), particularly Objective 4 (maintaining and enhancing the public open space qualities and recreation opportunities of the coastal environment). The NZCPS explicitly recognises the role that esplanade reserves and strips have in contributing to public open space needs (policy 18).



## Key differences between esplanade areas

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The main differences between the three types of esplanade areas are described below.

### Esplanade reserves

Esplanade reserves may be required when land is subdivided, when land is reclaimed, when land is developed (through the use of conditions), or when a road is stopped under the LGA 1974. Esplanade reserves can also be created voluntarily.

They are classified as reserves under the [Reserves Act 1977](#) and land ownership is transferred upon deposit (completion) of the subdivision plan to a territorial authority.

The boundary of an esplanade reserve is measured from its bank where it is a river or stream, or its margin where it is a lake, or from the mean high water springs (MHWS) where it is in a coastal area. In all cases the landward boundary is a fixed survey line. Accordingly, the landward boundary does not change as the water boundary accretes or erodes. Further details on defining the location and width of banks and tidal boundaries are provided in the next section (Defining boundaries next to waterbodies).

### Esplanade strips

Esplanade strips may be required by a rule in a plan, when land is subdivided, reclaimed, or developed; or when a road is stopped. They may also be required by a condition of consent for reclamation. Additionally, an esplanade strip may be created voluntarily at any time by agreement.

Esplanade strips are a legal instrument created between a land owner and a territorial authority. They are registered on the title, but the land within the strip remains in the ownership of the land owner. Although identified on a survey plan, they do not need to be formally surveyed.

The creation of a strip, and restrictions and requirements relating to its use and management, are noted on the title and bind every party having an interest in the land. The form of the agreement and standard restrictions to be imposed on an esplanade strip are defined in [Schedule 10](#) of the RMA.

An esplanade strip can include provisions to exclude access by the public during certain times or under certain conditions (as prescribed in [Form 31](#) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 - also see examples of conditions in the advantages and disadvantages table below).

Unlike esplanade reserves, the width of an esplanade strip remains unchanged within the same allotment. So if a river bank is eroded by 2 metres, the width of the esplanade strip then extends beyond its old boundary by 2 metres to offset the lost ground.

Esplanade strips can be varied or cancelled by a territorial authority subject to the procedure set out in s234 of the RMA. Similarly where a condition applies, an esplanade strip can be changed, reviewed and cancelled under s127-132 of the RMA.

## Access strips

Access strips can be used to enable public access to or along water bodies or public land. They can be established at any time by agreement between the land owner and the territorial authority under s237B of the RMA.

Access strips are surveyed and fixed, but their ownership remains with the land owner. The creation of a strip, and restrictions and requirements relating to its public use are defined in Schedule 10 of the RMA and are set out in the form of an easement registered against the title to the land.

Access strips may be cancelled at any time by agreement between the land owner and territorial authority, taking into account the matters in s237B(4) of the RMA.



## Defining boundaries next to waterbodies

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### How to define the location of a bank, or the width of a river (or stream)

Esplanade areas are frequently established along the banks of rivers and streams. In order to do so, and in order to establish if a river (or stream) has an average width of 3 metres or more, the position of the natural boundary along the bank must be determined.

The terms 'river' and 'bed' (of a river) are defined in s2 of the RMA along with how it is measured - at its annual fullest flow or level without topping its banks. This means that when measuring a 'river bed' it will always be greater than a river's ordinary flow.

### Subdivision of land with tidal boundaries

Generally, titles of older parcels of land with a tidal boundary (ie, the land is bounded by the sea or a tidal river or stream), will show the position of the tidal boundary as the mean high water mark (MHWM) as per s35 of the Crown Grants Act 1908.

Notwithstanding the RMA, the boundary of the land being subdivided continues to be the MHWM and all of the land to the MHWM must be accounted for on the survey plan.

During subdivision when an esplanade reserve or esplanade strip is set aside from land with a tidal boundary, the boundary is mean high water springs (MHWS) as per s230 of the RMA. If the horizontal positions of MHWS and MHWM are not significantly different, the tidal boundary is labelled MHWM/MHWS.

In areas where the horizontal positions of MHWS and MHWM are significantly different, the land between the two positions is shown on a (redefinition) title survey plan as a separate parcel. Redefinition surveys precisely identify established land boundaries through an accurate survey. Under s237A of the RMA, this parcel, being land in the coastal marine area (ie, land below MHWS) is shown as vesting on deposit in the Crown, subject to any rule in a district plan or any resource consent which provides otherwise.

### Methods of defining tidal boundaries

Tidal boundaries such as mean high water or MHWS may be determined by many different techniques. The approach taken will be influenced by the individual location and will depend on a number of factors including the type and value of the land, the hydraulic gradient and the required accuracy of the survey.

In low-value rural areas, physical evidence such as the position of a bank or cliff may be accepted without further investigation. In any case the physical evidence such as the toe of a bank, the edge of consolidated ground or the extent of a type of vegetation will be an important determining factor.

Where further confirmation is required, tidal transfer methods such as the Education Method or the Range-Ratio Method will add further confidence. These methods transfer tide levels from an established tide gauge at a standard port to the area of the survey using a temporary tide gauge and sea level observations. The [LINZ website](#) provides a discussion of methods for determining MHWS and the tidal level information to be used as part of MHWS determination for cadastral surveys. This includes the use of direct levelling by surveyors to establish the MHWS where it is in close proximity to a standard port tide gauge. This can only be used for a few kilometres either side of a standard port tide gauge, where the range of the tides is the same.

In any determination a combination of methods will provide the most reliable result.



## Creating esplanade areas under the RMA

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Territorial authorities can determine their own requirements in relation to esplanade areas through plans, or they can fall back on the esplanade requirements under the RMA. Territorial authorities must also give effect to the NZCPS, in addition to any other national policy statement or national environmental standards relevant to esplanade areas.

The RMA generally provides for esplanade areas to be taken or set aside when allotments of less than 4 hectares are created.

However, s77 of the RMA also provides for district plans to include rules to waive, reduce or enlarge the required width of a reserve, to enable a reserve to be taken from allotments of 4 hectares or greater, and for an esplanade strip to be required instead.

Under the RMA an esplanade area can be created in the following circumstances:

- subdivision of private land
- reclamations
- road stopping
- conditions on resource consents
- voluntary creation.

### Esplanade areas created through subdivision of private land

Under s230 of the RMA, an esplanade reserve or esplanade strip can be taken for one or more of the purposes of s229 of the RMA, including protection of conservation values, provision of public access, or provision of recreational use (that is compatible with the conservation values) when privately owned land is subdivided.

The taking of an esplanade reserve or esplanade strip when land is subdivided is restricted to allotments which abut the coast, lakes or rivers.

Where an allotment of less than 4 hectares is created, the presumption is that an esplanade reserve of 20 metres width will be set aside where the lot adjoins the coast, rivers whose bed width is an average of 3 metres or more, or lakes whose bed is 8 hectares or more in area.

However, under s77 of the RMA, a rule in a district plan can alter this presumption so that either no reserve is required, or the width of the reserve is to be greater or less than 20 metres, or an esplanade strip is required instead. (Note: s230 of the RMA stipulates that the size threshold applies before any esplanade reserve or strip is actually taken.)

Where an allotment of 4 hectares or greater is created, the presumption is that an esplanade reserve will not be taken on the allotment. Similarly this presumption can be altered under s77 of the RMA by a rule in a district plan that specifies the circumstances in which an esplanade reserve or esplanade strip can be taken. In this case there is no minimum size of the water body to which the requirements apply.





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An esplanade reserve taken on subdivision vests in the territorial authority, but may be transferred to the Crown or a regional council by agreement.

Compensation matters are covered separately in the guidance note.

### **Esplanade areas created through reclamations**

A regional council may state in its regional policy statement and/or any relevant regional plans the circumstances where esplanade areas are to be created on a reclamation of river beds, lake beds, or the foreshore and seabed. This will guide the council in determining any esplanade areas that may be required as a condition of granting a resource consent for reclamation, and in conducting its functions in relation to approval of survey plans submitted under s245 of the RMA.

Even if there is no such policy in place, a regional council can require the creation of an esplanade area as a condition on any specific resource consent that it grants for a reclamation under s108(2)(g) of the RMA.

### **Esplanade areas created through road stopping**

[Section 345\(3\) of the LGA 1974](#) requires the first 20 metres of any road stopped adjoining the coast, rivers over 3 metres wide and lakes over 8 hectares to be set aside as an esplanade reserve. This includes paper roads. Under [s77 of the RMA](#) the width of any such reserve can be varied by a rule in a district plan.

### **Esplanade areas created through conditions on resource consents**

Under [s108\(2\) and s108\(9\) of the RMA](#), esplanade reserves or strips can be imposed as a condition on any resource consent provided they are in accordance with the purposes specified in a district or regional plan.

See the [Resource Consent Conditions](#) guidance note for further details on how financial contributions work under the RMA. Development contributions can also be taken for reserve purposes under the [Local Government Act 2002](#).

### **Esplanade areas voluntarily created**

Voluntary creation of esplanade reserves, strips and access strips can be initiated between a land owner and a territorial authority at any time.

Under [s239](#) of the RMA esplanade reserves can be voluntarily made where land owners vest land to a territorial authority for reserve purposes under the [Reserves Act 1977](#).

Esplanade strips can be voluntarily created under [s235](#) of the RMA for the purposes outlined in [s229](#). Under s235 no instrument for an esplanade strip can be registered with the District Land Registrar unless every person having a registered interest in the land has endorsed their consent on the instrument.

Access strips can be created through agreement at any time under [s237B](#) of the RMA.



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Esplanade and access strips should be created in accordance with [Schedule 10](#) of the RMA and be in the prescribed form, [Form 31](#) for esplanade strips and [Form 32](#) for access strips of the [RMA Forms, Fees and Procedure Regulations 2003](#).

There is no restriction on the width of the river, size of lake or the size of the reserve itself, to which voluntary creation of an esplanade area applies.



**Benefits and limitations of esplanade areas**

There are both benefits and limitations in using the three esplanade area mechanisms to manage riparian margins.

An esplanade reserve may be a more desirable option than an esplanade strip when overall control of an area is necessary. Alternatively, an esplanade strip may be more appropriate where:

- a river or coastal area is subject to erosion or accretion that could either strand or erode a reserve that was fixed in space, or
- protection, access or recreational objectives are able to be achieved without the need for direct management of the area by the local authority.

Ultimately it is the management of esplanade areas that will determine how successfully they meet their purpose, and how well they fit into a wider framework of the management of water, riparian and coastal management. The following table sets out the advantages and disadvantages of the different types of esplanade areas:

<b>Advantages of using esplanade reserves</b>	<b>Disadvantages of using esplanade reserves</b>
<p>An esplanade reserve does not need to be a standard width, provided a consent is obtained to vary the width. It could be 20 metres wide in some areas and, for example, 15 metres wide in others (subject to local authority approval).</p>	<p>The width of the esplanade reserve may change as the water boundary (MHWS) accretes or erodes. This means that it is possible for an esplanade reserve to disappear as the land erodes, increase in width (area) if deposition occurs, or to become isolated if the waterway changes course.</p>
<p>There is no dispute as to location, as it is clearly marked on a survey plan and on the ground.            Areas of high conservation, access or recreational value incorporated in an esplanade reserve are under maximum control of the territorial authority. This enables them to:</p> <ol style="list-style-type: none"> <li>1. take an integrated approach to riparian management</li> <li>2. include these areas in district plans</li> <li>3. encourage community interest groups to assist with management</li> <li>4. enforce relevant council bylaws in these areas</li> <li>5. consider and develop appropriate public facilities</li> </ol>	<p>The council is required to maintain and manage reserves. This could result in considerable financial cost being incurred as their number increases.            An esplanade reserve needs to be surveyed, which incurs costs (although these costs may have already been incurred).</p>
<b>Advantages of using esplanade strips</b>	<b>Disadvantages of using esplanade strips</b>



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<p>Like esplanade reserves, strips do not need to be a standard width, provided an appropriate consent has been obtained.</p> <p>Access can be retained where a river or stream is liable to change its course or to be erosion-prone and public access is a high priority.</p> <p>Compensation, if payable, is likely to be less as a strip is just an interest in the land.</p> <p>In some cases the objectives of the RMA can be achieved by retaining the land in private ownership.</p> <p>Consistent width and maximum utility is maintained where the water edge is actively accreting or eroding as the strip moves with the water body margin.</p> <p>Esplanade strips can be voluntarily created at any time by agreement (unlike esplanade reserves). The provision of voluntary public access can enhance the esplanade reserves network.</p> <p>A strip can be appropriate to use in areas of low or moderate conservation values.</p> <p>A strip can be appropriate when it is desirable or necessary to temporarily close off an area to the public, such as during lambing.</p> <p>Responsibility for maintenance remains with the land owner.</p>	<p>As the width remains constant, the land owner can sometimes effectively lose control of large areas of land where coastal or river bank erosion occurs.</p> <p>A territorial authority does not own the strip so it has less control. Esplanade strips may also have conditions attached to their management based on Form 31. Use/access can be restricted and would require negotiation to change.</p> <p>Strips are not a practical solution in areas of urban expansion - if erosion occurs, any corresponding shift in the strip could affect many properties.</p> <p>The ability to impose restrictions or conditions on public access could significantly reduce a strip's usefulness for public access.</p>
<p><b>Advantages of using access strips</b></p>	<p><b>Disadvantages of using access strips</b></p>
<p>Similar to advantages of esplanade strips. Access strips can be created at any time by agreement between the land owner and the territorial authority.</p> <p>Access strips may be cancelled at any time by agreement between the land owner and territorial authority, which may provide greater flexibility to land owners.</p>	<p>Similar to disadvantages of esplanade strips.</p>

Esplanade areas can also be used to help mitigate the risk of natural hazards. However in using esplanade areas, consideration should be given to how natural hazard risks might change as climate changes. Note that climate change is expected to exacerbate existing natural hazards, particularly in coastal areas.

See the MfE publication on [Coastal Hazards and Climate Change](#) for further information on using esplanade areas to manage natural hazards risks; and also the Natural hazards and [Climate change](#) guidance notes.



## Developing esplanade provisions for RMA plans

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### Regulatory

Esplanade reserves and strips and access strips are just one set of a range of tools available to territorial authorities or land owners to provide for the conservation of, or public access to, water bodies. Unlike non-regulatory methods, these can be automatically triggered by district plan provisions at the time of subdivision or land use consent.

However, a number of factors need to be examined when determining the strategic approach for esplanade areas including the form of protection and level of management. Important factors are:

- the nature of resources (eg, extent of coastline or land abutting waterways)
- the nature of land uses (eg, rural/urban/natural habitats/features and their proportions within the district)
- the possibility of developing an integrated network of access points to water bodies through the use of esplanade reserves and strips.

When defining overall objectives, the following matters should be considered:

- the physical characteristics of waterways and coastal areas within the region or district, their local or regional significance and the values that need protection
- the extent and location of existing reserves along waterways and the coast
- the effectiveness of existing esplanade provisions
- the benefits (environmental, social and cultural) of appropriately managed esplanade areas, how they contribute to the integrated management of natural and physical resources in the region or district, and how such areas contribute to providing for the relationship between local iwi and their ancestral lands, wahi tapu and other taonga
- the demand for, and the desirability of, maintenance or enhancement of conservation and natural-character values and access and/or recreational opportunities along waterways in the region or district.

Once the overall objectives have been defined, the options for managing riparian and coastal margins need to be assessed.

The key matters that should be considered are:

- the options available for creating esplanade areas
- the relative advantages and disadvantages of esplanade reserves compared to esplanade strips and/or access strips
- whether policies and/or rules should be applied generally to all water bodies, or targeted to specific categories of water body or individual water bodies
- whether there are particular circumstances which apply (such as completing a public access link)
- situations where the cost of esplanade reserve or strip creation would outweigh any benefits (taking into account benefits in the longer term).



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The effectiveness of esplanade provisions is largely dependent on how well they reflect the specific circumstances in a district and how consistently they are implemented. Success will be achieved by ensuring a high level of community input to determine district-wide riparian values, followed by prioritising and integrating esplanade provisions into wider district strategies.

Some best practice tips for developing district plan provisions are:

- include well developed objectives and policies, based on a thorough consideration of the requirements for access and riparian management in the district
- use plain, simple language to achieve clarity.
- locate provisions within a clearly defined section in the plan to ensure ease of location
- make esplanade provisions an element of the district plan policies on riparian and coastal management: include policies on public access, recreation and protection of conservation values important to the district, with appropriate cross references and linkages
- cooperate and consult with the public and land owners to increase their awareness of what the council is trying to achieve, as well as improving the participatory process.
- identify water bodies where esplanade and access strip provisions apply and specify their location in a schedule or on a plan.
- provide well developed assessment criteria to enable other water bodies not listed in a schedule or on a plan to be considered in future
- include clear criteria for reduction or waiver of esplanade provisions
- clarify whether strips or reserves are preferred for each identified water body (or part water body) or develop criteria for determining appropriateness on a case-by-case basis
- include a draft of management conditions for esplanade strip easement documentation. Also see form 31 examples in the advantages/disadvantages table
- rely on the definitions in the RMA eg, the definition of 'bed', so that there can be no misunderstanding as to what is meant
- include non-regulatory methods to achieve riparian management as part of the overall package - for example, develop a separate esplanade policy document or link to the Long Term Plan
- use concept plans/management plans for areas where rapid future growth or infill is likely to occur. These will alert owners and developers of proposals for walkways and linkages and can encourage better integration between areas
- provide rules in district plans (eg, in Open Space or Conservation Areas or Zones) to control bulk and location, removal of buildings and setbacks along with other relevant performance measures to manage activities in esplanade areas.

In addition to esplanade reserves, strips and access strips, the following regulatory tools are also available to use:

- Marginal strips - areas of Crown land that adjoin the sea, lakes or rivers and are reserved from disposal by the Crown. They are created and managed under the Conservation Act 1987 and are held for conservation purposes. They are also held to enable public access and recreational use of the strips and adjacent water bodies. Management of marginal strips is usually the responsibility of the



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Department of Conservation but can be transferred to local authorities or adjoining owners where appropriate.

- Reserves - can also be created under the [Reserves Act 1977](#). These may be vested in a council as all or part of a reserve contribution at the time of subdivision or created by the council or the Crown from land purchased from private land owners. In such cases the land becomes reserve upon resolution of council to that effect or by gazette notice. A reserve can include water bodies and/or land adjoining the margins of water bodies. Reserves can be used for conservation purposes as well as a wide range of other values.
- Regional plans - regional water resource plans, for example, provide for the management of waterways and other water resources in a region.
- Designation - used to identify high-priority conservation/amenity areas for public acquisition.
- The [Walking Access Act \(2008\)](#) provides for the establishment of walkways over public and private land. The New Zealand Walking Access Commission must obtain written consent from the relevant administering authority in order to declare a walkway over public land, or negotiate easements or leases with landowners of private land.

### Non-regulatory

A number of the following non-regulatory mechanisms can be used either as an alternative to, or in combination with, regulatory approaches to achieve the purposes of the RMA and effective riparian management best suited to a district's characteristics:

- public education
- provision of information on alternative non-regulatory methods such as vegetation removal, riparian planting and retirement of particular areas
- identifying and linking regulatory methods with strategic documents including the Long Term Plan
- the use of management and maintenance plans for esplanade areas which can be linked with regional policies and rules
- establishing community care groups to help manage and restore environments
- conservation covenants - these are legal agreements between a land holder and a covenanting agency to protect an area's natural values (eg, fencing or pest control). A covenant can be entered into between a land holder and the Department of Conservation, [Queen Elizabeth II National Trust](#) or a local authority. The land holder retains ownership but because the covenant is registered against the title, it is binding on future owners. A covenant may also provide for public access, which can be limited to certain times or circumstances.
- Coastal open space strategies or open space strategies - prepared by regional or district councils to provide a vision, outcomes and identified actions for the provision of open space
- industry accords – the [Sustainable Dairying: Water Accord](#), for example, is a set of national good management practice benchmarks aimed at lifting environmental performance on dairy farms. It has been agreed between DairyNZ and dairy companies, with the support of, and input from a wide range of industry stakeholders including Federated Farmers. This is a broad and comprehensive pledge that includes commitments to targeted riparian planting plans, effluent management, comprehensive standards for new dairy farms and measures to improve the efficiency of water and nutrient use on farms.



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- joint management agreements (eg, enabling access to gather kaimoana).

### **Circumstances which influence the type of esplanade area provision**

The geography of a district can influence the nature of the esplanade provisions included in a district plan.

- Districts with large areas of rural land, natural habitats or natural features tend to make more use of esplanade and access strips instead of esplanade reserves. As these areas are often relatively inaccessible, many councils are inclined to defer the maintenance and control of such areas to land owners.
- Rural land owners are often more comfortable with the concept of strips than reserves, as it provides them with more direct control over how these areas are used and managed.
- Urban councils are more likely to use esplanade reserves as they usually want to exercise greater control over maintenance and access.
- The size of the rating base will determine the extent of resources available to develop, administer and manage any reserves (eg, many districts in the South Island encompass large areas, but have a relatively low rating base - this can limit the amount of resource available to manage these areas).





## Compensation provisions for esplanade areas

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### Esplanade reserves and strips

Under the RMA, compensation must be paid by a council for taking esplanade reserves or esplanade strips where:

- the width of the esplanade reserve/strip exceeds 20 metres on a lot of less than 4 hectares created when land is subdivided; with compensation being payable only for the land additional to the 20 metres ([s237E](#))
- any esplanade reserve/strip of any width is required to be set aside or created on a lot 4 hectares or more, created when land is subdivided ([s237F](#)).

Compensation is not required to be paid by the council for taking esplanade reserves or esplanade strips where:

- a lot of less than 4 hectares is created when land is subdivided where the land is within 20 metres from the mark of MHS of the sea or from the bank of any river or from the margin of any lake ([s237E](#))
- a lot of more than 4 hectares is taken under a plan rule developed under [s77\(1\)](#) of the RMA.

### Access strips

There is no legal requirement to provide compensation when an access strip is created. However, as the formation of access strips is based on a voluntary agreement between the land owner and the council, compensation may be payable. Similar mechanisms of compensation to those used for esplanade strips would be appropriate, as the access strip creates an interest in the land.

### Valuing land and interest in land

The process for the valuing of land for esplanade reserves is established under [s237H](#) of the RMA. This section enables the applicant and a council to reach agreement as to the amount of compensation payable. The section sets out a further process under the [Rating Valuations Act 1998](#) to determine the value if the initial process is inconclusive.

The Courts have established that the 'land value' of the land means:

"the sum which the owner's estate or interest therein, if unencumbered by any mortgage or other charge thereon, might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to impose, and if no improvements (as herein before defined) had been made on the said land".

Some councils require the applicant to provide a valuation of the land from a registered valuer, while other councils employ their own valuer. Sometimes two different valuations are used (one provided by the council and one provided by the applicant) and a midpoint agreement is reached. Some councils allow the cost of the compensation to be offset against any reserve's contribution that may otherwise be payable by the applicant.

However, unlike esplanade reserves, the registration of an esplanade strip does not change the ownership of the land; instead it registers an interest in the land. As such, the compensation paid should only be in relation to the interest transferred - the value of the interest lost by the land owner and the value gained by the council. As this value of the interest may be less than the 'land value', an esplanade strip can provide cost advantages to a council when compensation is payable.

## Historical information

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### The Queen's Chain

The reservation of land along the margins of waterways had its origins in early legislation governing subdivision and settlement of Crown land in New Zealand. Queen Victoria sent instructions to Governor Hobson on 5 December 1840 to reserve land along water bodies and not to allow these reserved areas to be occupied for private purposes. Instructions issued by the Surveyor-General under Regulations pursuant to the Land Act 1877 required reserves of 100 links (ie, 1 chain) along navigable rivers. By 1886 these provisions had been extended to settlement surveys of Crown land in coastal areas. Section 110 of the Land Act 1892 required a 66-foot (ie, 1 chain) wide strip of land to be reserved along the coast, lakes over 50 acres, rivers over 33 feet wide, and rivers under 33 feet wide at the discretion of the Commissioner. These early statutory requirements relating to survey and subdivision of Crown land gave rise to the colloquial term 'the Queen's Chain' - which is still used today to refer generally to reserved land along the margins of waterways and the coast.

### Local Government Act 1974

Section 289 of the [Local Government Act 1974 \(LGA 1974\)](#) provided a code for reserves along water. Originally these reserves were deemed under s289(1), to be local purpose reserves "for the purpose of providing access to the sea, lake river or stream as the case may be and to protect the environment" Under the Reserves Amendment Act 1979, these reserves become esplanade reserves.

The LGA 1974 required a 20-metre esplanade reserve to be provided at the time of subdivision along rivers over 3 metres wide adjoining allotments less than 4 hectares, the coast, or lakes over 8 hectares. Once created, the reserve was to be vested in the relevant local authority under s306(4).

A special case were allotments over 4 hectares adjoining the coast and lakes over 8 hectares: if the land was used for rural purposes and land owners did not intend to sell the land within 5 years, compensation and survey costs relating to the establishment of the esplanade reserve were paid by the Crown (s290).

The above sections of the LGA 1974 were repealed by the RMA and have been included to explain how older esplanade reserves were taken.

## Definitions

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### Mean high water and mean high water springs (MHWS)

Defining the position of MHWS is important as it is used to delineate the landward jurisdictional boundary of the coastal marine area (CMA) between the RMA and the Marine and Coastal Areas (Takutai Moana) Act 2011.

The definition for MHWS from *New Zealand Almanac, Maritime Transport Division* is:

*The average of the levels of each pair of successive high waters during that period of about 24 hours in each semi lunation (approximately every 14 days) when the range of tides is greatest.*

Further information on subdivisions with tidal boundaries and methods for determining MWHS is provided in the section of the guidance note on [Defining boundaries next to waterbodies](#).

### Movable water boundaries - key terms

Some key terms relating to water boundaries are defined in Appendix A of the BE Hayes publication: *Elements of the Law on Movable Water Boundaries*, March 2007:

#### Natural boundaries

Natural boundaries are not demarcated (that is, not marked with pegs or such) but are identified and delineated as to the tidal line or inland water line or middle thread that applies. This means that the land title register and plans which support it do not control the extent of the parcel on the ground where the rules of evidence of things there observed - the moving boundary - control the extent of the parcel at any given point in time.

#### Fixed boundaries

This term does not mean what it implies - boundaries that are guaranteed. What it does mean is boundaries that have been surveyed and geometrically defined and demarcated on the ground, and that the monuments (generally pegs) placed there may, if lost, be reproduced in accordance with the Survey Regulations. In relation to public access, the landward boundary of any road or other component of publicly owned margins under current interpretation is a fixed boundary. In contrast, the riparian (river) or littoral (sea) boundary of the publicly owned margins is almost always a moveable boundary. An express Crown grant of land surveyed by lines on all sides of the land including the water side may form an exception.

#### Accretion

This is the gradual and imperceptible increase to land bordering water through the deposit of firm land on the banks of a river or stream, seashore or lakeshore, or through withdrawal of the water. Accretion may occur by (a) the washing up of sand or soil to form firm ground; or (b) the recession or withdrawal of water from the adjoining land as



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the result of seasonal changes in water level, or of longer term climatic changes such as drought conditions (a dereliction). When an accretion increases the width of a road, a reserve, or Crown land adjoining water, the increase in the parcel takes on the same legal character as the land to which it attaches. The "new" land is road if the land to which it attaches is road. Where there is no reservation of public land along water and there is a moveable natural boundary - that is, the water boundary is not defined by the lines of a survey to exclude accretion (which is rare) - there is an addition to the adjoining title. The moveable natural boundary may be tidal (the sea), an inland water line along a Crown-owned river, or a river or stream to which the presumption of ownership to the middle line applies.

### **Dereliction**

Dereliction is an accretion of dry land gained by the gradual receding of waters.

### **Erosion**

Erosion is the loss of land adjoining water by the gradual and imperceptible action of the water. All riparian (riverside), littoral (seaside) and lakeside land may be subject to erosion. If privately owned to the water or the centre line, the land lost by the action of the water is lost to the registered proprietor; if a road or other public reservation lies between the land Crown granted and the water, the road or public land may be physically eroded away but (subject to individual assessment) will generally retain its legal status even if covered by water. If the advance of the water crosses the road or other reservation, the title of the registered proprietor will stay fixed at the Crown grant boundary, that is, the landward side of the road, reserved or other public land.

### **Diluvion**

Diluvion is the slow advance of the waters over the land.

### **Avulsion**

When the change of the position of the middle line of a river or stream has been sudden, violent and visible, as from the exceptional runoff from heavy rain or melting snow, the original middle line of the stream continues as the line of division of the two estates on the opposite banks of the stream. No question of accretion on the one side and erosion on the other arises.

### **The Ad Medium Filum Aquae Rule**

By the common law, ownership of land adjoining a watercourse, which is not owned by the Crown, gives rise to the presumption that title extends to the middle line. It is a rebuttable presumption - that is, evidence to rebut (disprove) the presumption is always admissible.



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