

Amendments to the Rules for Proposed Esplanade Reserves & Esplanade Strips in the Western Bay Of Plenty District Plan Review

January 2009

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and
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Esplanade Reserve & Esplanade Strip Amendments to the District Plan 2009

Introduction:

This report comprises two parts. The first part consists of amendments to the existing rules relating to esplanade reserves and esplanade strips, with the reason for each amendment being covered by an explanatory note immediately following.

The second part of this report is an amendment which proposes 30 additions to the existing schedule of proposed esplanades along specific portions of streams and rivers. The reason for each addition is similarly covered by an explanatory note immediately following and also links to the new or amended rules as detailed in Part I. The current schedule is presently found at Appendix IV of the District Plan and in the Plan drawings.

The existing rules and schedule associated with proposed esplanade reserves/strips in the Western Bay of Plenty District Plan were drafted in 1994. There have been significant changes in the development and population distribution of the district since that time. In a general sense most of the changes had been anticipated but some had not.

The District Plan amendments detailed in this report recognise the growth trends within the Western Bay of Plenty District since the mid 1990's. Further, in line with these growth trends and anticipated future directions, these amendments more specifically apply Council's responsibilities to those riparian margins which satisfy statutory criteria for conservation, riparian access and appropriate recreation purposes. These amendments also support Council's democracy role by identifying where the public have right of pedestrian access and by clarifying the process through which pedestrian access-ways to and along riparian margins are formed.

Part I: - Amendments to Rules:

1. Addition / amendment to Rule 16.4.3.2

Where a subdivision establishes a lot of 4 hectares or less adjacent to a waterway Council may require an esplanade reserve or esplanade strip for access, recreation and conservation purposes to be established.

Explanation: Rule 16.4.3.2 presently refers only to Esplanade Strips for Conservation purposes, however there are occasions when it is appropriate to acquire an esplanade reserve or strip that has not been previously identified in Schedule IV of the Plan. - Not all riparian features that are valuable to the wider community can be identified by a desk-top exercise; they only come to Council's attention when site inspections are possible at the time of a proposed subdivision. It needs to be remembered that the relevant amendment to the R.M. Act which enabled Councils to identify where they would definitely acquire esplanades upon subdivision, was not intended to exclude all, or any, other possibilities. If such possibilities continue to be simply restricted to rule 16.4.3.1(b) then public access to important and sometimes critical riparian links or natural features will be lost. Such an outcome would derogate from the NZ Coastal Policy Statement and would be contrary to the intent of both the R.M. Act and the new Outdoor Access Bill.

2. New Rule.

Regardless of the size of the lot/s adjacent to the waterway Council may require an esplanade reserve or esplanade strip for access, recreation and conservation purposes to be established where a subdivision results in the average of all the lots after subdivision being 4 hectares or less and there are a total of eight or more lots (including the balance lot) after subdivision. In the case of such developments Council may also acquire public access through the subdivision to the esplanade reserve or esplanade strip.

Explanation: In the context of 1. above, there have been occasions when the opportunity to acquire an esplanade reserve or strip is forfeited because the professional agents acting for the developer have deliberately ensured that the lot (or lots) adjacent to the riparian margin exceeds four hectares even though many, or all, of the other new lots that are created are less than four hectares.

Furthermore, in the period of the current District Plan the scale of a number of subdivisions has been possible solely because of the Protection Lot Rule and the associated application of TDR's by the developer. This has resulted in sizeable subdivisions in locations that were never anticipated when Appendix IV was drafted in 1994. The consequence is that some of these lifestyle developments are relocating relatively large numbers of residents to formerly rural landscapes and many of these new residents come with expectations of a right of access to nearby waterways. A subdivision which results in a total of eight lots equates to an average of not less than twenty residents. A current case in point is a subdivision which will result in not less than 80 residents, many of whom will want to access the waterfalls and swimming holes on the adjacent Te Puna Stream.

3. **Addition / amendment to Rule 16.4.3.1(b) which states that an esplanade reserve or strip may be acquired where it provides access to waterfalls, swimming holes and picnic sites.**

This rule shall be modified to include access to cascades, Department of Conservation land, harbours and estuaries, known fishing areas, and where such provides linkages to existing legal public access such as formed and unformed roads and existing reserves or strips.

Explanation: The current rule is too restrictive in regard to the range of recreational experiences and opportunities that justify reasons for acquiring esplanades. However, for reasons of perceived safety and tranquillity, this rule amendment deliberately does not specifically include acquisition of esplanades for shooting wild game.

The definition of a waterfall infers a free- falling body of water and, arguably, does not include cascades which are frequently very scenically attractive and provide recreational opportunities but by definition they flow over the streambed for part, or all, of their length.

Access to DOC land infers a destination and a linkage; such opportunities are considered in cooperation with DOC.

Some margins of the Western Bay of Plenty's harbours and estuaries are presently not included in Appendix IV. This derogates from the NZ Coastal Policy Statement. It is prudent to remember that right of access does not mean that access paths will be formed, especially where ecological values are paramount. What remains relevant is the opportunity to: (a) provide for the right of public access to our shores, and, (b) to provide options for future Councils and their citizens.

Fresh-water fishing and gathering of kaimoana are popular recreational and cultural pursuits that the current rule does not acknowledge.

In the context of the explanation at 1 above, without the ability to link to public access points it is possible for some existing and future esplanades to remain inaccessible to the public.

4. **To comply with the NZ Coastal Policy Statement it is necessary to amend Appendix IV of the District Plan and the Plan drawings by including as "Proposed Esplanade" all the margins of Tauranga Harbour, Maketu Estuary and Little Waihi Estuary which do not presently provide for public right of access.**

Explanation: The NZ Coastal Policy Statement states that the maintenance and enhancement of access to the coastal marine area is a matter of national importance. The RMA does not permit a rule in a District Plan to derogate from (i.e. curtail or modify the application of) this regulation.

5. **Council may, and generally will, acquire an esplanade reserve on both banks along all those portions of creeks, streams and drains which exceed three metres in width within all Residential Zones.**

Explanation: This rule recognises existing Council practice associated with the higher level of public expectation and demand that accompanies urban communities. It not only provides for the right of riparian access to the communities on either side of the stream, but it also provides Council with future

development opportunities for pedestrian and cycle links as alternatives to road transport.

6. **A statement shall be included in the District Plan that indicates the presence of, or an intention to acquire, an esplanade does not mean that public access will be formed over that reserve or strip but it gives a right of legal public access and makes provision for future generations where the opportunity might otherwise be lost. The intention to form public access, and the timeframe for such, shall be determined by the Recreation and Leisure Strategy and the Reserves Management Plan process.**

[There is often concern that provision for right of access equates to imminent formation by Council of access paths and associated facilities. A common perception by developers is that this will soon result in various forms of negative social behaviour. Such unrealistic timeframes can cause unnecessary resentment from landowners to proposed esplanade acquisition. The statement of procedure makes it clear to landowners and prospective developers what the actual process is and how it generally relates to their property].

7. **All public Rights of Way, Access Reserves and Esplanade Strips which provide access to or along waterways, public reserves and DOC lands shall be identified in the District Plan drawings and appendices.**

[At present this does not happen for many of the Rights of Way or Access Reserves so there is no indication to the public or to Council staff that such access exists].

Part II - Amendments to Schedule:

Appendix IV of the District Plan, and the Plan drawings, shall be amended by extending the range of Proposed Esplanades along specific streams and rivers. These include:

- i. **The un-named short tributary stream of the Waiau River within the Waihi Beach Residential Zone at Island View.**
[For explanation see amendment to rule at 5. above].
- ii. **The true right bank of the Waiau River downstream from Waiau Road to Steele Road.**
[As a consequence of relatively recent sewer reticulation at Waihi Beach/Athenree it is anticipated that this area will be progressively subdivided to comparatively small lot sizes within the new District Plan period. In future years this portion of the Waiau River will provide recreational benefits to the residents of Waihi Beach/Athenree as urbanisation extends outward].
- iii. **Amend item 1(c) of Appendix IV to include: the true left bank of the Uretara Stream downstream of Wharawhara Road to the closed railway line.**
[In line with 3. above this is the only portion on the true right bank of the lower Uretara Stream that is not already esplanade reserve/strip or public land in

some other form. Peri-urban growth is already creating small lots along this riparian margin and to wait for this area to be included in a future Katikati Structure Plan will be too late for the establishment of an uninterrupted public riparian link].

- iv. The true left bank of the Aongatete Stream downstream of Hume Lane to the confluence of the Kauritatahi Stream then up the true left bank of the Kauritatahi Stream to the unformed road-line off the end of Windridge Lane.**

[This addition aligns with 3. above with respect to in-stream values and linkage to existing roads. Part of this riparian margin is already the subject of a recent subdivision and further development is anticipated in this area. The Aongatete Stream offers high recreational values and it will be increasingly valuable as the population of the Katikati environs grows].

- v. That portion on the true right bank of the Aongatete Stream which does not already provide right of public access between State Highway 2 and the unformed road approximately 1.5 kms upstream which is accessed from Wright Road.**

[This aligns with 3. above with respect to both its recreational values and the fact that it is an omission in the public riparian margin linkage along the true right bank of the lower Aongatete Stream].

- vi. The true right bank of the Aongatete Stream upstream of Upland Road, extending for a distance of approximately one kilometre, which links the existing Esplanade Strip with the existing Marginal Strip (Crown Land Reserved from Sale).**

[This aligns with 3. above with respect to both its recreational values and the fact that it is a notable omission in the public riparian margin linkage along the true right bank of the upper Aongatete Stream].

- vii. The true right bank of the Whatakao Stream between Knyvett Road and Tauranga Harbour.**

[This aligns with 3. above and links three otherwise disjointed existing Esplanade Reserves].

- viii. Both banks of the Waipapa River extending downstream from the unnamed and unformed road-line off Waipapa Block Road (east of Sagewood Road) to Francis Road.**

[This riparian margin aligns with 3. above with respect to recreational opportunities and linkages with existing esplanade reserves and strips. It also acknowledges peri-urban pressures that will result from the anticipated population growth in the nearby Omokoroa environs].

- ix. Both banks of the Waipapa River tributary from Plummer Road downstream to the confluence of the main branch of the Waipapa River.**

[Same justification as immediately above].

- x. **The true right bank of the Te Puna River between Hayward Road and State Highway 2.**
[Growing population in the Te Puna, Whakamarama and Plummers Point environs will place greater recreational interest on this waterway. This stream margin of about 400 metres is all that prevents continuous right of public access long the true right bank of Te Puna Stream between its middle reaches and Tauranga Harbour].
- xi. **Both banks of the Te Puna River downstream from Leyland Road to the unformed road-line of Minden Road.**
[This addition aligns with 3. above with respect to recreational values and linkage to existing roads, esplanade reserve and Marginal Strip. Part of this riparian margin is already the subject of a recent large subdivision application and further development is anticipated in this area].
- xii. **Both banks of Oturu Creek from Borell Road to the Waikaraka Estuary of Tauranga Harbour where the creek is in the CMA or exceeds three metres in width.**
[This inclusion acknowledges increasing population growth in the Waikaraka Estuary environs. In line with growing local population expectations it identifies a possible pedestrian access link to the estuary and to a future associated harbour margin walkway].
- xiii. **Both banks of the Ngamuwahine River between the old highway bridge on Ngamuwahine Road and State Highway 29.**
[This is a very popular trout fishing stream. It also offers pedestrian access options to an existing esplanade strip on the true left bank and to Lower Kaimai Reserve on the true right bank].
- xiv. **Both banks of the Omanawa Stream between Hidden Gorge Scenic Reserve and State Highway 29.**
[This is a very good trout fishing stream which is constrained by a lack of public access. Future urban and peri-urban growth, as well as state highway realignment, is anticipated to increase public demand for access to the recreational opportunities this waterway contains.
- xv. **Both banks of the Kopurererua Stream downstream from the confluence with the Tautau Stream to the Tauranga City boundary.**
[This addition aligns with 3. above with respect to linking with an existing public access network and both Council and DOC administered lands. Part of this riparian margin is already the subject of a recent large urban development (The Lakes), and further development is anticipated in this catchment].
- xvi. **Both banks of the Waiorohi Stream between the northern boundary of Tauranga City's water catchment area and the city boundary.**
[This inclusion anticipates future subdivision development associated with Tauranga City growth and links the city with the water catchment to the south,

therefore it is of significance where lots smaller than four hectares are proposed].

- xvii. The true right bank of the Waimapu Stream between McPhail Road and the Tauranga City boundary which is not already identified as existing public access or proposed esplanade.**

[This completes the extensive linkage of unformed roads, Crown Land Reserved from Sale, and the existing or proposed esplanade reserves and strips. This inclusion refers specifically to a stream margin approximately 600 metres long that is immediately west of Pukemapu Road end].

- xviii. The true left bank of the Waimapu Stream between Warner Road and the Tauranga City boundary which is not already identified as existing public access or proposed esplanade.**

[Downstream of Warner Rd. this completes the linkage of public access mechanisms on the true left bank and this inclusion refers to a small stretch of river near the city boundary].

- xix. The true left bank of the Kirikiri Stream between Ohauti Road and the Waimapu Stream which is not already identified as existing public access or proposed esplanade.**

[This inclusion anticipates future subdivision development associated with Tauranga City growth and it completes the linkage of public access mechanisms on the true left bank, much of which is already esplanade].

- xx. Both banks of the Kaiate Stream between Kaiate Falls Scenic Reserve and Waitao Road.**

[This addition recognises future peri-urban growth near the boundary with Tauranga City. It also aligns with 3. above with respect to recreational values and linkage to existing roads (formed and unformed), esplanade reserves, proposed esplanade and a future walkway linkage to Kaiate Falls Scenic Reserve].

- xxi. Both banks of the Raparapahoe Stream from No.4 Road Lions Walking Track to No.4 Road Bridge then the true right bank continuing downstream to State Highway 2.**

[This addition recognises future peri-urban growth near Te Puke. It also aligns with 3. above with respect to recreational values and linkages to existing roads (formed and unformed), to existing esplanade reserves and to a future access downstream from the existing Lions Walking Track which presently leads to the Raparapahoe Stream Falls].

- xxii. Both banks of the Ohineangaanga Stream from Dudley Vercoe Drive downstream to State Highway 2, then continuing on the true right bank to the Kaituna River. [This addition recognises future urban growth in Te Puke and its environs. It aligns with 5. above with respect to waterways within urban communities. As Te Puke grows in size and population this inclusion**

also provides the potential for a future public access linkage from Te Puke to the Kaituna River].

xxiii. Both banks of the Waiari River from the existing esplanade reserve near Roderick Road downstream to the Kaituna River.

[This addition similarly recognises future urban growth in Te Puke and its environs. It aligns with 5. above with respect to waterways within urban communities (in this instance, future urbanisation). As Te Puke grows this inclusion also provides the potential for a future public access linkage from Te Puke, along a relatively unmodified stream margin, to the Kaituna River].

xxiv. The true left bank of the Kaituna River from Maungarangi Road downstream to Bell Road.

[The Kaituna River is the largest river in the western Bay of Plenty. It has significant recreational benefits for future generations as Te Puke and Tauranga City grow. The acquisition of riparian margins on both banks of the lower river will be of sub-regional significance over time].

xxv. Both banks of the Mangorewa River from the existing esplanade reserves downstream for approximately two kms to the confluence of the Kaituna River. *[This addition aligns with 3. above with respect to recreational values and linkage to existing roads, esplanade reserve and to the Kaituna River].*

xxvi. Both banks of the Kaituna River, which do not presently have legal public access, extending downstream from the third rapid (which is encountered when travelling upstream and is west of the quarry reserve on State Highway 33) to the Maungarangi Road Bridge.

[In line with comments above concerning the sub-regional value of this river, the lower-mid reaches of the Kaituna are very scenic and are very popular for kayaking. This portion of the river also provides for commercial tourism (jet-boat tours). In most cases both recreational activities extend upstream as far as the third rapid. This addition aligns with 3. above with respect to high recreational values].

xxvii. Both banks of the Pokopoko Stream from Allports Road downstream to the Kaikokopu Canal.

[This high volume and often attractive waterway provides swimming, picnicking, white-baiting and trout fishing opportunities. It flows relatively close to Paengaroa and subdivision in the local environs has been common in recent years. With its proximity to an increasing population density, the Pokopoko Stream becomes significant where smaller lots are proposed].

xxviii. Both banks of the Mangatoetoe Stream from State Highway 2 downstream to the Kaikokopu Canal.

[This short portion of waterway provides white-baiting opportunities and is a significant tributary to the Kaikokopu Stream. Also, being near the highway and relatively close to the Arawa Road residential community, this part of the stream presents some small measure of public interest].

- xxix. The true left bank of the Kaikokopu Canal from State Highway 2 downstream to the Wildlife Refuge adjacent to Little Waihi Estuary.**
[This waterway offers popular white-baiting and is a recognised duck shooting area. It aligns with 3. above with respect to its recreational values and linkage to existing public access].
- xxx. Both banks of the Pongakawa Stream from Old Coach Road downstream to State Highway 2.**
[This waterway provides swimming, white-baiting and trout fishing opportunities; terrain is relatively easy and this addition complements linkage to an existing and proposed public access network].
- xxxi. Both banks of the Waitahanui Stream from Otamarakau Valley Road downstream to State Highway 2.**
[The principal recreational value of this portion of the Waitahanui is white-baiting, fishing and game-bird shooting. It meanders through easy farmed terrain and has moderate aesthetic appeal. It is relatively close to the open coast of the Bay of Plenty and therefore is subject to possible life-style development interest. Though close to State Highway 2 its distance from larger urban centres diminishes the likelihood of subdivision compared to many other parts of the district but it is of significance where lots smaller than four hectares are proposed].