

Western Bay of Plenty District Council

Change to the District Plan – First Review

Plan Change 33 Wairoa River Esplanades

Section 32 Report

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1.0 Introduction

1.1. General Introduction and Background

The purpose of this Plan Change is to complete a link of existing and proposed esplanade reserves and strips along the entire length of the Wairoa River from the Tauranga Harbour to McLaren Falls. Esplanade reserves and strips preserve the natural character of and public access to and along the coast, lakes and rivers (see Chapter 1.2 below for a full description of their purpose). The Wairoa River is one of the District's most significant rivers and is highly valued and used by the community because of its natural and recreational qualities. It is therefore important to protect these natural qualities and to allow for future public access, especially given the extra demand that will be created by an increasing population.

The completion of this link was intended to have been achieved under the District Plan Review but was only partially achieved due to an error of omission. The land that is still required to complete this link is from approximately 200m south of Redwood Lane to approximately 600m south of the State Highway 29 bridge on the true left bank (west of river) and from approximately 800m south of Redwood Lane to approximately 600m north of the Ruahihi Power Station on the true right bank (east of river). The attached map (**Attachment A**) shows the required land and the affected landowners.

To set aside this land for this purpose, it would need to be identified in the District Plan (Appendix 4 – Proposed Esplanade Reserves, Esplanade Strips and Access Strips) and on the Planning Maps as proposed esplanade reserves or strips. The preferred options for the Wairoa River are likely to be;

- True left bank of the river – proposed esplanade strip (20m)
- True right bank of the river – proposed esplanade reserve (20m)

These however can only be acquired at the time of subdivision (including boundary adjustments) and compensation shall be payable where an esplanade reserve or strip is acquired on the creation of a new allotment greater than four hectares, and where an esplanade reserve or strip of a width greater than 20m is acquired on the creation of a new allotment less than four hectares. The requirement for esplanade reserves and strips may also be waived by Council in full or part in a number of circumstances as detailed in Rule 12A.3.1 (f) of the "Proposed Esplanade Reserves, Esplanade Strips and Access Strips" Section of the District Plan (**Attachment B**).

Furthermore, the construction of public access and other public facilities will not occur immediately after esplanade reserves or strips are acquired. The establishment of esplanade reserves and strips are a long term goal and any proposed works in relation to these along the Wairoa River will be publicly notified for submissions through a review of the Kaimai Reserve Management Plan before being adopted.

It is worth noting at this point that the majority of the titles making up the required land are too small in size to be subdivided under the current subdivision rules for the Rural Zone. These rules may change in the future however and allow this possibility. The introduction of other rules may also be considered in the future to incentivize landowners to provide land for esplanade reserves or strips e.g. through allowing the creation of a new title.

1.2. Purpose of Esplanade Reserves and Esplanade Strips

Section 229 of the Resource Management Act 1991 (RMA) explains the purpose of Esplanade Reserves and Esplanade Strips as follows:

- *An esplanade reserve or an esplanade strip has 1 or more of the following purposes:*
 - *(a) to contribute to the protection of conservation values by, in particular,—*
 - *(i) maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or*
 - *(ii) maintaining or enhancing water quality; or*
 - *(iii) maintaining or enhancing aquatic habitats; or*
 - *(iv) protecting the natural values associated with the esplanade reserve or esplanade strip; or*
 - *(v) mitigating natural hazards; or*
 - *(b) to enable public access to or along any sea, river, or lake; or*
 - *(c) to enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.*

1.3. Definition of Esplanade Reserves and Strips

For the purpose of further understanding any possible future implications of this Plan Change, the difference between esplanade strips and reserves is explained as follows.

Esplanade Reserves

These are classified as reserves under the Reserves Act 1977 and land ownership is transferred to Council upon deposit (completion) of the subdivision plan. The boundary of an esplanade reserve is measured from the bank of a river or stream. In all cases the landward boundary is a fixed survey line. Accordingly, the landward boundary does not change if the water boundary accretes or erodes.

Esplanade Strips

These are a legal instrument created between a landowner and Council. They are registered on the title, but the land within the strip remains in the ownership of the landowner. 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. An esplanade strip can include provisions to exclude access by the public during certain times or under certain conditions. Unlike esplanade reserves, the width of an esplanade strip remains unchanged within the same allotment. So if a river bank is eroded by two metres, the width of the esplanade strip then extends beyond its old boundary by two metres to offset the lost ground.

2.0 Resource Management Act 1991 (RMA)

2.1. Section 32

Before a proposed plan change can be publically notified the Council is required under section 32 ("s.32") of the Act to carry out an evaluation of alternatives, costs and benefits of the proposed review. With regard to the Council's assessment of the proposed plan change s.32 requires the following:

- (3) *An evaluation must examine-*
 - (a) *the benefits to which each objective is the most appropriate way to achieve the purpose of the Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.*

- (a) *For the purposes of [[the examinations referred to in subsections (3) and (3A)], an evaluation must take into account-*
 - (a) *The benefits and costs of policies, rules or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

The benefits and costs are defined as including benefits and cost of any kind, whether monetary or not. This report must evaluate the extent to which the proposed plan change is the most appropriate way to achieve the purpose of the Act.

2.2. Section 74

In accordance with Section 74(2A) of the Act, Council must take into account any relevant planning document recognised by an iwi authority lodged with Council.

The Ngati Kahu Hapu Environmental Management Plan 2011 is relevant to the Wairoa River. In Part 4.5 (Te Awa Wairoa – Wairoa River) of this document, Ngati Kahu describe their connection to the River as follows:

"Ngati Kahu are the river people. Our unique, strong, undisrupted undisputed connection to the River was cemented in pre-European times and extends to nowadays. The histories, whakapapa, stories, place names and other knowledges associated with the river belong to and are entrenched in Ngati Kahu heritage. Te Pura the guardian taniwha of the

River is Ngati Kahu. It is this very connection that shapes our unique identity as a people.

These strong connections to the River make us responsible in the active management, enhancement, growth, protection and preservation of the awa, its environs as well as the knowledge associated with the awa. Ngati Kahu are the Kaitiaki for the entire awa. Ko te awa ko au- ko au te awa."

They also explain in this document that for them the river is a source of kai moana (seafood), a place for spiritual and physical healing, a place for carrying out traditional and cultural activities such as the riding of waka, and a place where other activities such as swimming are also widely enjoyed.

They also set out a number of policies for protecting what is important to them; many of which are relevant to the purpose of esplanade reserves and strips. Some of these include:

- 2. Actively promote and resource the enhancement and protection of the mauri (life-force) of the Wairoa River*
- 5. Actively work to restore biodiversity that has been lost through unsustainable practices.*
- 9. Ngati Kahu do not support any development of any structures which will further impact on the mauri of the Awa including buildings, marinas and jetties and walkways.*
- 11. All Ngati Kahu current and future generation, must have the ability to access, use and protect nga waimaori, and history and traditions that are part of such landscapes.*

As detailed in Chapter 1.2 of this Planning Report, esplanade reserves and strips serve a number of purposes and these will contribute towards meeting Policies 2, 5 and 11. As for Policy 9, the establishment of esplanade reserves and strips may result in some smaller scale buildings and walkways/bridges being constructed however any plans for such will be subject to a public submission process under any review of the Kaimai Reserve Management Plan for which Ngati Kahu can be involved. Any impacts of such structures should be weighed up against the positive effects of any esplanade reserves or strips including that walkways may be needed to provide access to meet Policy 11.

3.0 Consultation

3.1. Public Consultation

Council engaged with the public to request input prior to the writing of this report. This was done by notices in our local newspapers and a specific information page on the Council website. Council also engaged with the surveying and planning community in the Western Bay of Plenty and Tauranga area via the "Surveyors Newsletter". No feedback was received in response to these.

3.2. Affected Landowner Consultation

Letters were also sent to the potentially affected landowners informing them of the Plan Change and its implications. Feedback was initially provided by two of these landowners (Ellet Family Trust and Hanvey and Graham) while the remaining landowners who didn't respond were contacted again by phone. Site visits were organised where landowners wished to ask more questions and discuss likely options for public access.

The feedback from the landowners is summarised as follows:

Landowners	Feedback
Poripori Farm A Block	Did not support or oppose. Did not consider themselves affected as they have no intention to subdivide.
Ellet	Opposed because: <ul style="list-style-type: none"> • Properties adjoining the river are sometimes less than 20m in width. • Due to contour and riverbank erosion there are some portions of the title unsuited for reserve status. • For many decades the public have been allowed unrestricted access to the land (by previous owners) which has lead to the accumulation of rubbish, abandoned vehicles, intrusion of unwanted pests, and theft of and damage to property. • More appropriate than a 20m esplanade would be the creation of a fenced cycleway and a formed track that allows access to the river at selected and appropriate point yet denies normal vehicular access.
Jenson	Did not support or oppose. Were aware of the possibility of esplanades when purchasing the property.
Collins (Site Visit)	Did not support or oppose. In favour of walkways but were concerned at the possibility of public access within close proximity of their dwelling which is approximately 10m from the property boundary. Also felt there was little room for any walkways and they would likely be washed away in floods.
Carson and Gartner (Site Visit)	Did not support or oppose as property unable to be subdivided and public already access the river in season. Note: Their house is also approximately 10m from the property boundary.
Hanvey and Graham (Site Visit)	Opposed because: <ul style="list-style-type: none"> • They own an export avocado business which from time to time requires that they deny access to their privately owned river

	<p>access in order to safely undertake maintenance on the orchard above e.g. carry out spraying.</p> <ul style="list-style-type: none"> • The last effort to take esplanade reserves was met with rejection from landowners from Ruahihi to McLarens Falls and this position has not altered. Note: This refers to the Upper Wairoa River Feasibility Study from February 2003. It was not a Plan Change. • They felt including their property did not complete a link but creates additional length. Note: Neighbours upstream were not included in consultation because it is expected for a bridge to cross over to the other side of the river from this point. • The topography makes construction of public access unfeasible. • They are concerned that showing the land as proposed esplanade will encourage people to access their land. • They can't subdivide and feel that it would better to show land as proposed esplanade when the subdivision rules are changed to allow the possibility.
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In taking into account these concerns, there are some other relevant considerations, which include:

1. Many of the above concerns will not be realised unless landowners are eligible to and intend to subdivide or intend to boundary adjust.
2. Even if they do, Council will not necessarily acquire 20m of land depending on the specific circumstances (see Rule 12A.3.1 (f)).
3. It may also be some time before an esplanade is actually established.
4. Council can establish esplanade reserves and strips in a way to minimise effects on landowners e.g. litter bins, fencing, signs, formed tracks, maintenance and regular inspections.
5. In the case of esplanade strips, these can also restrict public access during certain times or under certain conditions.
6. Where topography, erosion or flood risk is an issue, the construction of formed access may not be appropriate and other options will be considered e.g. marker poles or cat's eyes on rocks.
7. Some members of the public already access the river regardless of there being esplanades or not.
8. Allowing formal public access may actually reduce the likelihood of other concerns being realised such as theft of and damage to property as increased surveillance is likely to discourage offenders.

4.0 Issue - Incomplete link of existing and proposed esplanade reserves and strips along the Wairoa River from the Tauranga Harbour to McLaren Falls.

To complete this link the required land would need to be identified in the District Plan (Appendix 4 – Proposed Esplanade Reserves, Esplanade Strips and Access Strips) and on the Planning Maps as proposed esplanade reserves or strips. The two options consider whether or not to proceed with this.

4.1. Option 1 – Do not identify the required land as “Proposed Esplanade Reserves/Strips” on the Planning Maps or in Appendix 4

Advantages	<ul style="list-style-type: none"> ▪ Acknowledges the concerns raised by affected landowners.
Disadvantages	<ul style="list-style-type: none"> ▪ Fails to correct an error of omission that occurred through the District Plan Review and essentially will provide an exemption for these specific landowners which was not given to other landowners in that review process. ▪ Council will not be able to take esplanade reserves or strips when landowners subdivide (if eligible now or in the future) or boundary adjust in order to provide public access to the river at that point or as a part of a wider network of public access. If such an opportunity is missed it may not arise again.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ Ineffective because it will not complete the link of existing and proposed esplanade reserves and strips from the Tauranga Harbour to McLaren Falls; which is the purpose of the Plan Change. ▪ Inefficient as it will require an alternative means of acquiring land or future Plan Changes when landowners in opposition sell their land.

4.2. Option 2 – Identify the required land as “Proposed Esplanade Reserves/Strips” on the Planning Maps and in Appendix 4

Advantages	<ul style="list-style-type: none"> ▪ Corrects an error of omission that occurred through the District Plan Review. ▪ Allows Council to take esplanade reserves or strips when landowners subdivide (if eligible now or in the future) or boundary adjust in order to provide public access to the river at that point or as a part of a wider network of public access.
Disadvantages	<ul style="list-style-type: none"> ▪ Possible impacts on landowners if they subdivide or boundary adjust include: <ul style="list-style-type: none"> - Loss of land and/or use of land if it is acquired for esplanades. - Impacts on use of land because of public access e.g. affecting spraying. - In some cases, large or entire portions of narrow

	<p>properties being acquired.</p> <ul style="list-style-type: none"> ▪ Possible impacts on landowners otherwise: <ul style="list-style-type: none"> - Showing proposed esplanade reserves or strips may encourage public access prior to the actual establishment of any esplanade. This could also result in many of the same impacts listed above.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ Effective because it will complete the link of existing and proposed esplanade reserves and strips from the Tauranga Harbour to McLaren Falls; which is the purpose of the Plan Change. ▪ Is the most efficient way of acquiring land and will not require an alternative means of acquiring land or future Plan Changes when landowners in opposition sell their land.

4.3. Preferred Option

The preferred option is Option 2:

This requires;

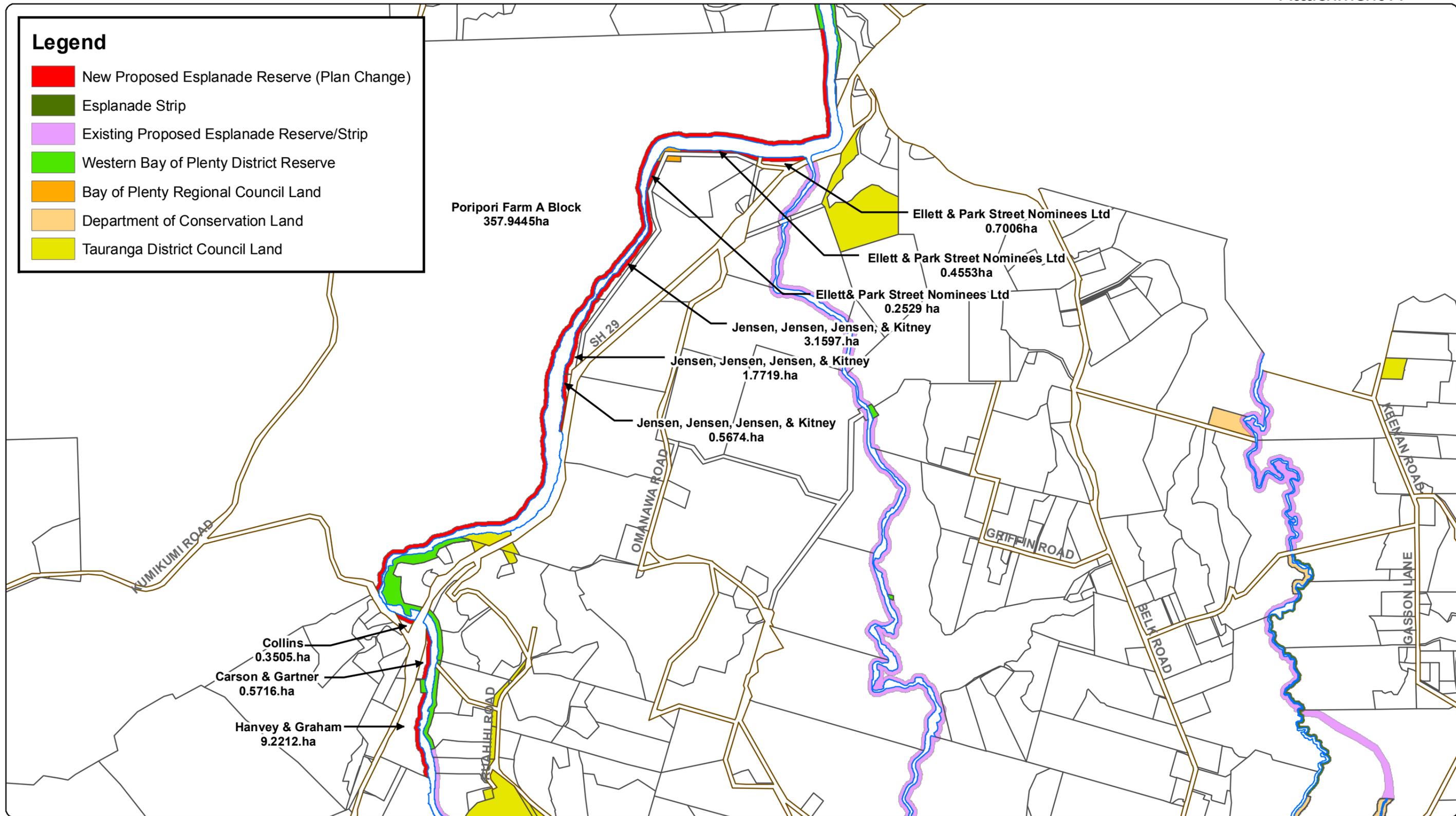
- Making amendments to Appendix 4 as shown below.
- Identifying the required land on the Planning Maps as “Proposed Esplanade Reserves/Strips” as shown in **Attachment C**.

Appendix 4 - Proposed Esplanade Reserves/Strips

1. An esplanade strip of 10m in width or 20m in width where topography dictates a wider strip is necessary to provide public access shall be set aside along the rivers and streams identified in the District Plan namely:
 - (xvii) The true left bank of the Wairoa River from Wairoa Road to ~~Ohourere Stream~~ approximately 500m upstream of the Kaimai Canoe Club site (which is on the reserve at Lot 1 DPS 29327) to where a suitable river crossing may be formed above potential flood waters.
3. An esplanade reserve 20m in width (or lesser width if there are special circumstance, e.g. buildings within 20m of the foreshore) shall be set aside in the locations identified in the Planning Maps ~~along the Harbour foreshore~~ in particular:
 - (iv) along the true right bank of the Wairoa River from Omanawa Road to, but not including, the Ruahihi Power Station on State Highway 29.

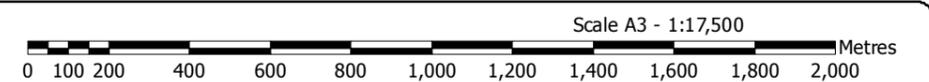
Legend

- New Proposed Esplanade Reserve (Plan Change)
- Esplanade Strip
- Existing Proposed Esplanade Reserve/Strip
- Western Bay of Plenty District Reserve
- Bay of Plenty Regional Council Land
- Department of Conservation Land
- Tauranga District Council Land

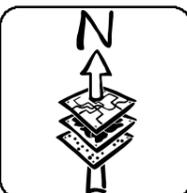


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Email: gis@westernbay.govt.nz
 Date: 28/11/2012
 Operator: mlb
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**WAIROA RIVER ESPLANADES PLAN CHANGE
 MAP OF PROPOSED AND EXISTING RESERVES
 AND AFFECTED OWNERS**



12A. Proposed Esplanade Reserves, Esplanade Strips and Access Strips

Explanatory Statement

Preservation of the natural character of and public access to and along, the coastal marine area, lakes and rivers are matters of national importance listed in the *RMA*. To give effect to these principles, *Council* has adopted a Recreation and Leisure Strategy as part of the *LTP* which, along with the ward reserves management plans, documents the future requirement for recreation reserves in the *District*. This is in order to ensure that the needs of future generations can be met.

Reserves serve functions additional to recreation. The *RMA* particularly specifies the need for esplanade reserves and strips to provide access and for riparian protection. For *lots* less than 4ha an esplanade reserve or strip will be required in all cases; if it is not required for access purposes it shall be set aside for conservation purposes. For *lots* of 4ha or greater *Council* will secure esplanade reserves or strips for access purposes as provided for in the District Plan or for conservation purposes if the *riparian area* is covered predominantly in native vegetation. In these circumstances *Council* may engage more cost effective techniques than purchase or compensation e.g. Regional Council Environment Plans and Department of Conservation acquisition/protection (See also Section 5), or riparian protection utilizing Section 18.4.2(h) combined with Access and Esplanade Strips.

The existence 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.

12A.1 Significant Issues

1. The *District* has a rapidly growing population and a visitor industry that is placing increased demands on reserves assets.
2. The integration of available methods to secure appropriate access to and along key waterways.
3. Esplanades have an important conservation role regarding riparian protection and water quality.

12A.2 Objectives and Policies

12A.2.1 Objectives

1. The provision of a network of reserves and facilities which satisfies the sport and leisure needs and aspirations of residents and visitors to the *District* whilst enhancing the natural, historic, educational and amenity values of the *District*.
2. The protection of high quality *riparian areas* for conservation purposes.
3. The integration of methods to secure strategic access along *riparian margins* and protect riparian conservation values.

12A.2.2 Policies

1. Gain reserve lands for sport and leisure, walkways and esplanades in line with the priorities identified in *Council's LTP*, through the criteria as set out in the District Plan, and by any other appropriate means.
2. Provide better access to natural features and recreational opportunities of public interest and provide better access to public land and facilities within reserves that enhance informal and unstructured leisure activities.
3. Require the protection of *riparian areas* covered in native vegetation as esplanade reserves or strips or by other appropriate means where esplanades may not be the preferred option, e.g. *riparian margin* retirement.
4. Ensure that significant ecological values are not adversely affected by the provision of public access to reserves.

12A.3 Rules

12A.3.1 Subdivision (taking of esplanade reserves or strips for access or recreation purposes)

- (a) Land required for esplanade reserves or strips (regardless of *lot* size) is shown on the Planning Maps and listed in Appendix 4.

- (b) In addition to (a) above, the requirement for an esplanade reserve or esplanade strip may be applied to provide access to swimming holes, picnic sites, waterfalls, cascades, Department of Conservation land, harbours and estuaries, known fishing areas, and where such access provides linkages to existing legal public access such as formed and unformed roads and existing reserves or strips.
- (c) Provision of public access may be required through the proposed subdivision to allow the public access from a public road to an esplanade reserve or esplanade strip, particularly at strategic access locations. *Council* shall consider the following:
 - (i) The effects of the proposed *development* and the need for public access to the esplanade, including the closeness of alternative access points to the esplanade;
 - (ii) The value and level of public benefit that is likely to result by providing access to the esplanade;
 - (iii) Compensation shall generally be payable.
- (d) *Council* may, and generally will, acquire an esplanade reserve on both banks along all those portions of creeks, streams and drains which exceed 3m in width within all Residential Zones.
- (e) Where a subdivision establishes a *lot* of 4ha or less adjacent to a *riparian margin*, *Council* may require an esplanade reserve or esplanade strip for access, recreation and conservation purposes to be established.
- (f) Esplanade reserves and strips may be waived in part or in full in the following circumstances:
 - (i) Where the land is already, or will be protected in perpetuity by way of subdivision consent notice, Queen Elizabeth II National Trust covenant, Reserves Act 1977 covenant or other registerable legal instruments acceptable to *Council* subject to appropriate alternative provision being made for public access along the water body concerned;
 - (ii) Where the subdivision is a boundary adjustment;
 - (iii) Where an existing *structure* is located within the 20m reserve and an appropriate esplanade reserve or esplanade strip or access strip cannot be established;

- (iv) Where an existing *structure* is located within the 20m reserve and an appropriately smaller esplanade reserve or esplanade strip and/or access strip can be established;
 - (v) Where by reason of security an esplanade reserve would be inappropriate and security cannot be assured by some other means. For example where there is defence lands, sensitive machinery, irrigation works or activities. Where appropriate, alternative access to deviate around the facility and maintain a continuous public access route in the vicinity may be required;
 - (vi) Where by reason of public safety, an esplanade reserve would be inappropriate and public safety cannot be assured by some other means. For example physically dangerous sites, port activities, including reclamations, defence lands, industrial subdivisions for activities including *hazardous substances*. Where appropriate, alternative access to deviate around the facility and maintain a continuous public access route in the vicinity may be required;
 - (vii) Where a public work or an electricity generation facility of regional or national significance is or is to be located on the foreshore or bank of a waterway, and for reasons of public safety and security the reserve and public access is not appropriate. Where appropriate, alternative access to deviate around the facility and maintain a continuous public access route in the vicinity may be required;

Where appropriate an esplanade for conservation purposes or other registrable legal instrument may be required to protect conservation values;
 - (viii) Where a work or *network utility* is or is to be located on the foreshore or bank of a waterway and for reasons of public safety and security the reserve and public access over the full 20m is not appropriate;
 - (ix) Where there are exceptional circumstances such as undue hardship, impracticality or cultural sensitivity.
- (g) Esplanade reserves and strips of greater width than 20m may be taken in the following circumstances:
- (i) Where there is an Identified Significant Ecological or Historic Heritage Feature that extends beyond 20m.

- (ii) Where *Council* considers the river bank or foreshore is prone to erosion or slippage;
 - (iii) Where topography or ecological values creates the need to form public access at a greater distance from the river bank or foreshore.
- (h) *Council* may substitute an esplanade strip for an esplanade reserve. Instances where esplanade reserves will be required are where there is a higher level of recreational use. An esplanade strip is more likely to be required where only infrequent access is necessary. Where an esplanade strip substitutes for an esplanade reserve and protection of native bush or vegetation is required then the esplanade strip instrument shall include provisions to this effect.
- (i) *Council* shall consider a Maori Reservation set aside under Section 338 and Section 440 of the Maori Land Act 1993 (Te Ture Whenua Maori) in lieu of an esplanade reserve or strip.

12A.3.2 Subdivision (protection of riparian areas through the taking of esplanade reserves or strips for conservation purposes)

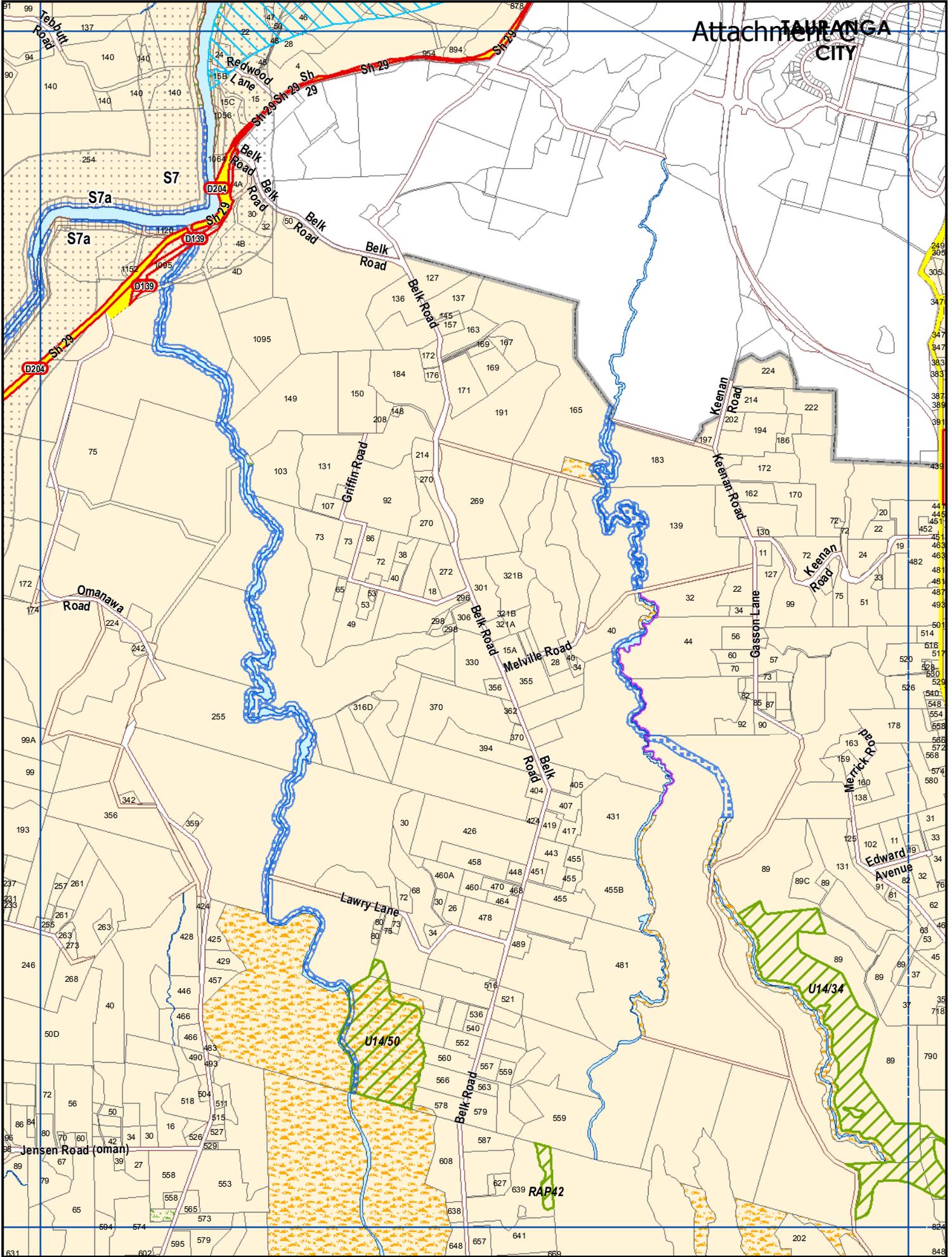
- (a) Where *lots* which are less than 4ha are being formed, an esplanade strip or similar instrument shall be created for conservation purposes except where an esplanade has been identified for access in accordance with Rule 12A.3.1 in which case it shall be created in accordance with that rule.
- (b) Where *lots* which are 4ha or more are being formed and the *riparian area* is covered in predominantly native vegetation, an esplanade strip or similar instrument shall be created for conservation purposes except where an esplanade has been identified for access in accordance with Rule 12A.3.1 in which case it shall be created in accordance with that rule.
- (c) If an esplanade strip is set aside as part of a riparian protection *lot* subdivision then compensation from *Council* shall not be payable on the esplanade strip.

12A.3.3 Resource consents

As a condition of a resource consent *Council* may require the setting aside of an esplanade reserve or strip or access strip to mitigate the effects of an activity.

12A.4 Other Methods

- 12A.4.1 The *Regional Council* management plans are suitable for targeting specific areas, particularly where *lot* sizes are 4ha or greater.
- 12A.4.2 The use of other public land will be considered such as road reserve and Department of Conservation land.

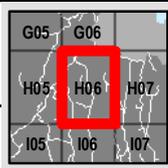


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Revision Date: 16 June 2012
PC28-44: Feb 9 2013 Notified