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13.0 ESPLANADE RESERVES/STRIPS - CONSERVATION PROTECTION and PUBLIC ACCESS

13.1 Introduction

The coastal and riparian areas of the Gisborne District are recognised and valued for a range of activities and reasons (eg. conservation, recreation, cultural, commercial fishing, transportation, commerce, tourism, historical), and for the value attached to them both by tangata whenua and the wider community.

Refer also to Chapter 14 - Financial Contributions.

Section 6 of the Act requires as a matter of national importance the preservation of the natural character of the coastal environment, wetlands, lakes, rivers and their margins and their protection from inappropriate subdivision, use and development. Council must recognise these matters in the District Plan.

The principal purposes of both esplanade reserves and esplanade strips and access strips are clearly defined in Section 229 of the Act for:

- protection of conservation values;
- enabling public access;
- enabling public recreation compatible with conservation values;
- catchment protection;
- mitigation of natural hazards.

Refer to Chapter 4.

The Regional Policy Statement advocates the continued maintenance and enhancement of public access to river and marine resources as essential for enabling community wellbeing. It also however seeks to restrict access in order to protect the conservation values.

Refer to Chapters 5 and 6.

The New Zealand Coastal Policy Statement and the Gisborne District Regional Coastal Environment Plan outline circumstances where access will need to be limited. These include:

- protection of areas of significant vegetation and/or habitats of indigenous fauna;
- provision for and protection of the relationship of Maori and their culture and their traditions;
- protection of public health and safety;
- a level of security consistent with the purpose of a resource consent; and
- other exceptional circumstances sufficient to justify the restriction notwithstanding the national importance of maintaining access.

Much of the District's coastal land is in private ownership with limited public access at specific locations. It has been modified by the clearance of indigenous vegetation and the development of smaller communities, urban areas and port development. The margins of lakes and rivers have also been substantially modified by the clearance of vegetation, stopbanking and river control works and the planting of forestry. In most instances this has reduced the value of the river, lake or stream with respect to conservation, habitat protection or recreation opportunity.

Presently within the District access to waterways is obtained by a number of mechanisms, including existing esplanade reserves, esplanade and access strips, marginal strips, legal roads (formed and unformed), across public land and by agreement with landowners.

The District has many waterways and areas of coast which are significant for recreation activities such as fishing, walking, rafting. The most significant recreational and conservation worthy waterways have been identified as strategically important in the Plan. The entire area of land in the Gisborne District that abuts the coastal marine area is considered a regional resource subject to the principles of sustainable management and has therefore been identified as a priority when opportunity exists for conservation or gaining public access.

13.2 Issues

- 13.2.1 Inadequate protection of the riparian areas of lakes, rivers and the coastal environment that have high conservation value results in loss of aquatic and terrestrial habitats and the natural functioning of water bodies and the inappropriate management of riparian areas.
- 13.2.2 Lack of public access to and along the riparian areas of lakes, rivers and the coastal marine area results in a loss of amenity and recreational opportunity.
- 13.2.3 Recreation use that is incompatible with conservation values at the margins of rivers, lakes and the coastal environment results in a loss of conservation values.
- 13.2.4 A lack of public access to waterways to provide for the reasonably foreseeable needs of future generations.

13.3 Objectives

1. Preservation of the natural character and protection of the riparian areas of lakes, rivers and the coast where appropriate.
2. The maintenance and enhancement of public access and recreation activity to and along the margins of rivers, lakes and the coastal marine area that is compatible with conservation values.
3. Management of the riparian areas of rivers, lakes and coastal marine area that promotes the avoidance, remedying and mitigating of adverse effects of land use on water quality.

Principal reasons (1-3): The margins of water bodies often have high conservation values. These areas can contain different species and/or provide important feeding, resting or breeding areas. They can be of importance to the natural functioning of the water body or an essential part of both aquatic or terrestrial habitats.

Water bodies and their margins may have high amenity values. The maintenance and enhancement of public access to and along rivers, lakes and wetlands and the coastal marine area is considered a matter of national importance in the Act and was reflected in the consultation exercise with the community. The intention, therefore of maintaining and enhancing conservation values, public access and recreational opportunity in esplanade areas is in line with public attitudes and national policy.

The provisions of this plan relating to esplanade reserves, esplanade strips and access strips are aimed at ensuring that the matter of national importance of maintaining and enhancing public access to and along the coastal marine area, and the margins of rivers, lakes and streams and the purposes of Section 229 of the Act and the community's reasonable expectations of it are upheld.

13.4 Policies

1. To provide for the preservation of the natural character of the margins of the district's rivers, lakes and the coastal environment and for the protection of the ecological and amenity values from inappropriate subdivision, use and development.
2. To provide for the acquisition of esplanade reserves or esplanade strips on subdivision or road closure in the rural, urban and township areas (including any applicable access strip) for the maintenance and enhancement of conservation values, public access and recreation to and along the District's coastal marine area and strategically important rivers.
3. To provide for the creation of esplanade strips to and along the District's coastal marine area and strategically important rivers.
4. Particular attention to the following criteria should guide but not limit the esplanade reserve / strip requirement on subdivision:
 - conservation value of the site;
 - the ability to obtain access onto and between existing reserves or strips;
 - public access to or along the coastal marine area or any strategically important river or stream;
 - recreational opportunity.
5. In considering whether to create an esplanade strip instead of an esplanade reserve the following assessment matters shall be applied:
 - the extent to which the river bank or coastal margin may or has the potential to change position due to erosion or deposition or permanent changes in the water course or water level;
 - the extent to which the retention of ownership of the land subject to the esplanade reserve by the adjoining landowner is necessary to maintain or promote the effective or efficient use of the adjoining land provided that the purposes of the esplanade strip under Section 229 of the Act will not be significantly diminished by the creation of any such esplanade strip;
 - the extent to which public access to the river or coastal margin is unlikely to be facilitated or promoted by the creation of an esplanade reserve.
6. To provide for the width of an esplanade reserve or esplanade strip required under Rules 13.6.1(a. and b.) and 13.6.2 to be increased.
 - where outstanding conservation, or recreation value warrant an increase in the width of any such esplanade reserve or esplanade strip;
 - where the maintenance or enhancement of the natural functioning of the adjacent waterbody warrants an increase to protect bank or dune stability, water quality, control shading or for sediment control;
 - where access to an existing or potential future reserve or resource of outstanding natural features would be enhanced by an increased width;
 - where provision of access recognises and provides for the relationship of Maori and their culture and traditions.

7. To consider negotiating an agreement with landowners for an access strip under s237B in place of an esplanade reserve or strip on land that is not subject to subdivision or where there is no "as of right" legislative ability to acquire esplanade reserves or strips.
8. to restrict public access along esplanade reserves/strips where priority has been given to significant conservation values.
9. In considering whether to grant a reduction in width or a waiver in respect of the requirement for an esplanade reserve or esplanade strip the following assessment matters shall be applied:
 - the extent to which any conservation values will be protected;
 - whether a queen Elizabeth II covenant is registered, or whether the Reserves Act 1977 or other protective mechanism exists in perpetuity;
 - the extent to which the natural functioning of the waterbody, water quality land an water-based indigenous habitats and natural values associated with water margin will be affected by any reduction in the width, size or non provision of the reserve or strip;
 - the extent to which public access and recreational opportunity is reduced or removed;
 - the extent to which public safety issues associated with the waterway or risks from plant, machinery or structures outweigh the public benefit of acquiring the esplanade reserve or esplanade strip or maintaining the required width;
 - the extent to which public costs of provision and maintenance of an esplanade reserve or esplanade strip are greater than the benefit in respect of the esplanade reserve and esplanade strip requirements pursuant to Section 229 of the Act;
 - where a reduction in the width could achieve the same purpose;
 - whether the esplanade reserve/esplanade strip requirement is the result of a subdivision which is an amalgamation of lots or a boundary adjustment where no additional lots are created.
10. To consider negotiating an agreement with landowners to obtain access to the margins of the coastal marine area, lakes or rivers. The access could be implemented by way of financial contribution of land at subdivision, or by negotiating an easement s237B of the Act.
11. To provide for the following water margins to be considered strategically important in the context of esplanade reserve and esplanade strip and access acquisition and negotiations:
 - any part of, or along the District's Coastal Marine Area;
 - Awatere River
 - Hamanatua Stream (mouth of stream up to and including Williamson Street / Douglas Street intersection) and the length of river which is adjacent to the Residential Lifestyle Zone (Scarly's Way).
 - Hangaroa River
 - Karakatuwhero River
 - Karekare Stream and all tributaries

- Karaua Stream from the sea to the State Highway (Main Road South)
- Kopuawhara River
- Koranga River
- Mangapoike River
- Maraetaha River
- Mata River
- Matokitoki Stream
- Moanui Stream
- Motu and all tributaries
- Nuhaka River
- Pakarae River
- Ruakituri River
- Raukokore River
- Rereauira River
- Ruatahanga River
- Tapuaeroa River and Tributaries
- Taruheru River (river mouth to Hansen Road)
- Te Arai River
- Turanganui River
- Uawa River
- Waiapu River
- Waihuka River
- Waikanae Stream
- Waikohu River
- Waikura River
- Waimata River
- Waingakia River
- Waingata River
- Waipaoa River
- Waioeka River and all Tributaries
- Waitahaia River and Tributaries
- Waitangirua River
- Whakarau River
- Whangaparoa River
- Wharekahika River
- Wharekopae River

Explanation (1): The margins of water bodies often have high conservation values. These areas can contain different species and/or provide important feeding, resting or breeding areas. They can be of importance to the natural functioning of the water body or an essential part of both aquatic or terrestrial habitats. Principal reason (1): Implements objectives.

Explanation (2): Due to the high level of recreation activity within the rural, urban and township areas it is considered appropriate that esplanade reserves are required in order to provide sustainably for public access, and recreational values where this is consistent with conservation values. The difference in the width requirement is largely a factor of population and recreational pressures on reserves in the urban and township areas as opposed to the rural areas. Principal reason (2): Implements objectives, Section 229 of the Act.

Explanation (3 and 5): In this district esplanade reserves can disappear with erosion. Rarely do abutting esplanade reserves join uniformly. The legal process involved with an esplanade strip is less intensive and expensive with no survey necessary to define the existing natural boundary. The strip will achieve the purpose of the Act with substantially less burden on all parties. Principal reason (3 and 5): Implements objectives, Section 229 of the Act.

Explanation (4): The management of riparian and coastal areas have a number of values and serve a variety of functions. Their management is of interest to private landowners and the public. There needs to be careful consideration regarding the values of these sites and their function. Not all values will be protected in every instance. Principal reason (4): Implements objectives.

Explanation (6): The provision for the securing of esplanade reserves and esplanade strips in excess of the required width is included to further maintain and enhance the development of esplanade areas which are of District and national importance. Principal reason (6): Sections 5 and 6 of the Act.

Explanation and Principal reason (7): Section 237B of the Act allows for the creation of easements with the agreement of Council and the landowner. It may be appropriate to use this mechanism where an esplanade reserve or strip will not be acquired through subdivision.

Explanation (8) Where conservation values exist recreation activities will need to be compatible with these values. Where they are not, the activities will be restricted. Those margins of the coast, lakes and rivers that provide recreation opportunity and public access worthy of protection have been incorporated into an Amenity Reserve Zone in order to protect those values and public access. Activities or works should be restricted either where conservation values or recreation opportunity is high and coastline or river margin topography provides easy access to facilitate this. Principal reason (8): Sections 5 and 6 of the Act. The conservation of the natural character of the coastal environment, wetlands, and lakes and rivers and their margins and the maintenance and enhancement of public access are matters of national importance.

Explanation and Principal reasons (9):

- The registration of a QE II covenant or other perpetual protection mechanism may under certain circumstances remove the need for an esplanade reserve or esplanade strip.*
- There may also be circumstances where other mechanisms such as rules existing elsewhere in the plan may remove the necessity for the provision of the esplanade reserve or strip.*
- In considering the taking of esplanade reserves and strips the natural functioning of ecosystems could be a major factor in reaching a decision. It may not be desirable to remove public access or enjoyment unless there are sound ecological or other reasons for doing so.*
- Unless the esplanade reserve or esplanade strip fulfils the purposes of Section 229 then a waiver should be granted.*
- A reduction in the width is warranted if the reduced esplanade reserve or esplanade strip will achieve the purposes of Section 229 of the Act.*

Explanation (10): Access to significant esplanade reserves or strips may in some circumstances be enhanced by the creation of access across private land to the area.

Explanation (11): The prioritising of areas where esplanade reserves/strips and access strips should be taken ensures that public funding is spent in areas where they are most required to

achieve national planning policies. It also ensures that the use and enjoyment of privately owned land is not restricted unnecessarily. Criteria for consideration of strategically important rivers include the following: Actual or potential natural, scenic, amenity and recreational and public access values including fishery values, indigenous fish and their habitat, and the habitat of trout and ecological corridors for wildlife; the intensity of landuses, their proximity to watercourses and the actual or potential contamination from diffuse sources; existing habitat including instream habitat and the importance of or extent of loss of existing vegetation and the ability to restore habitats where appropriate, and existing water quality and the ability to restore water quality where appropriate. Principal reason (11): The protection of conservation values is a matter of national importance (Section 6 of the Act).

13.5 METHODS OF IMPLEMENTATION

13.5.1 Advocacy

1. Council will liaise with statutory organisations (eg. Department of Conservation) tangata whenua and community groups with an interest in the resource to advocate sustainable land management practices to be undertaken along the margins of rivers lakes and the coastline.
2. To keep, maintain and make publicly available a register of esplanade strips, reserves and access strips.
3. Liaise with Department of Engineering and Works, lessees and landowners in areas where river control works have been constructed and where public access is desirable.
4. Council will seek voluntary agreements with landowners where esplanade reserves, esplanade strips or access strips are identified as strategically important and there is no as of right legislative ability to acquire the site.

Principal reasons (1 - 4): Advocacy enables direct input into the identification and prioritising of locations that are important to the esplanade resource. It highlights Council policies and ensures that appropriate statutory and community groups consider them when they are planning or undertaking activities. The identification of areas where esplanade reserves, esplanade strips and access strips are required is a project where a number of interest groups need to be involved. Public access can be acquired by means other than regulatory ones.

13.5.2 Economic Instruments

1. Council may negotiate and consider compensation to landowners where rivers, streams, and coastal riparian areas are strategically important or of outstanding significance or the land is required to be put into retirement to ensure its protection pursuant to the criteria of 12.7.1(b) of this Plan.

Where subdivision or development occurs and there is "no as of right" legislative ability to acquire esplanade reserves or strips without compensation Council will negotiate to have the land vested or set aside on a voluntary basis without compensation unless the conservation values, public access and recreational opportunity of the site are outstanding in which case compensation shall be considered.

2. Seek voluntary agreements with landowners without compensation where esplanade strips and access strips are identified as strategically important and are on land not subject to subdivision or development unless the conservation values, public access and recreational opportunity of the site are outstanding in which case compensation shall be considered.
3. Seek voluntary agreements with tangata whenua without compensation where esplanade strips and access strips are identified as strategically important and are on Maori land. Where the conservation values, public access and recreational opportunity of the site are outstanding, compensation shall be considered.
4. In the following circumstances Council will seek and negotiate an esplanade reserve or esplanade strip in excess of the required width or an access strip:
 - a) To adequately protect outstanding natural features and conservation values;
 - b) To enable public access to and the use of locations of recreational value where there is a deficiency in the resource.
 - c) To adequately avoid or mitigate against the adverse effects of natural hazards.

Principal reasons (1 - 5): The provision for the securing of access strips or esplanade reserves and esplanade strips in excess of the required width or where there is no 'as of right' legislative ability to acquire land for the esplanade resource is included to further maintain and enhance the development of esplanade areas which are of district and national importance. Esplanade strips overcome some of the limitations and costs associated with esplanade reserves. As a legal instrument they are registered against the land and act in a manner similar to an easement. They do not require surveying, the land is retained in private ownership and the strip moves with the changes in the waterbody. There is also the flexibility to create other appropriate arrangements to suit the circumstances of the strip (eg. closure of the access during lambing or breeding). Access strips are an easement arrangement designed to obtain access from public places (eg. roads, recreation reserves) over private land to an esplanade reserve or strip. These can only be arranged through negotiation with the landowner and Council. These instruments cannot be imposed as a condition of a resource consent.

The option of compensation to landowners for esplanade reserves or esplanade strips where rivers, streams and coastal margins are of outstanding value ensures the possibility of protection balanced within community expectations and financial constraints.

13.5.3 Information/Research

1. Council will carry out research to assess the need for enhancement of public access to and along the coastal environment, rivers and lakes.
2. Council will carry out research to assess the need for enhancement of areas where conservation values are high.
3. To identify any further rivers that in the opinion of the Council are strategically important for conservation, public access and recreation use. In the context of this chapter strategically important means necessary for the protection of conservation value, maintenance and enhancement of public access and /or enabling recreation use.

Principal reasons (1 - 3): Not all sensitive riparian and coastal areas will have been identified due to lack of knowledge and the isolated nature of parts of our district. To ensure that Council has the opportunity to acquire those areas with conservation and recreation value that will rapidly experience degradation with inappropriate management further research will be necessary. This may take place at the time the subdivision application is presented to the consenting authority but will not affect the outcome of that application.

NOTE : The Economic Instruments and Information Research methods will need to be funded through the annual plan process. Regulatory functions are already implicit in the funding of the Environment and Planning Department in the Annual Plan"

13.5.4 Regulation

1. Rural planning maps identify esplanade reserves and esplanade strips with a boundary line on the adjacent coastal or river margin. They have been incorporated into the adjacent land use zone. Esplanade reserves are managed under the provisions of the Reserves Act 1977. Esplanade strips are protected by the instruments drawn up when the strip was created.
2. Urban and township planning maps identify or indicate:
 - a) Where access to and along the coastal marine area, rivers lakes or streams is generally allowed by incorporating esplanade reserves, strips and access strips into the Amenity Reserve Zone.
 - b) Where access to and along the coastline, rivers lakes or streams is restricted by incorporating esplanade reserves, strips and access strips into the Heritage Reserve Zone.

Principal reason (1 and 2): Different zones indicate the level of impact of activities on different values attached to the site. Public access is restricted where it is necessary to meet the purpose of Section 229 of the Act. The difference in requirement is largely to do with the population and recreational pressures on reserves in the urban and township areas as opposed to the rural areas. Esplanade strips are instruments that leave the ownership of the riparian area in the hands of the property owner. In a rural region this may be desirable and the instrument created with the strip can protect both the public and the private property owner's rights. As a largely rural region this is a matter for consideration.

13.6 RULES FOR ESPLANADE RESERVES and STRIPS

General Rules

The following General Rules shall apply to the subdivision of land in all zones:

Refer to Chapter 12.

13.6.1 Subdivisions in the Gisborne Urban Area and the District's Rural Townships

- a) For any subdivision of land in the Gisborne urban area or the rural townships that results in the creation of an allotment of less than 4.0 hectares which abuts any part of or along the District's coastal marine area or any part of a river specified in Rule 13.6.4 an esplanade reserve of not less than 20 metres shall be provided.
- b) For any subdivision of land in the Gisborne urban area or the rural townships that results in the creation of an allotment of 4.0 hectares or more which abuts any part of or along the District's coastal marine area or any part of a river specified in Rule 13.6.4 an esplanade strip of not less than 10 metres shall be provided.
- c) For the purpose of determining the size of the allotment for the purpose of a) and b) the esplanade reserve shall be assumed to be included in the allotment.

13.6.2 Subdivisions outside of the Gisborne Urban Area and the District's Rural Townships

- a) For any subdivision of land outside of the Gisborne urban area and the District's Rural Townships that results in the creation of an allotment which abuts any part of or along the District's coastline or any part of a river specified in Rule 13.6.4 an esplanade strip of not less than 10 metres wide shall be provided.

13.6.3 Esplanade Reserves on Stopped Roads

- a) The requirement in section 345(3) of the Local Government Act 1974 to set aside stopped road as esplanade reserve shall be reduced to 0 metres in width where that road does not abut the District's Coastal Marine Area or a river specified in Rule 13.6.4; and
- b) Where the stopped road is outside of the Gisborne Urban Area and District's rural Townships an esplanade strip of 10m shall be required instead of a 20m esplanade reserve required under section 345(3) of the Local Government Act 1974.

13.6.4 Coastal marine area and list of specified rivers

- a) Rivers along which esplanade reserves or strips shall be provided:
 - i) Any part of, or along the District's Coastal Marine Area
 - ii) Awatere River
 - iii) Hamanatua Stream [mouth of stream up to and including Williamson Street /Douglas Street intersection] and the length of river adjacent to the Residential Lifestyle Zone (Scarly's Way)
 - iv) Hangaroa River
 - v) Karakatuwhero River
 - vi) Karekare Stream and all tributaries
 - vii) Karaua Stream from the sea to the state Highway (Main road South)
 - viii) Kopuawhara River
 - ix) Koranga River
 - x) Mangapoike River
 - xi) Maraetaha River
 - xii) Mata River

- xiii) Matokitoki Stream
- xiv) Moanui Stream
- xv) Motu and all tributaries
- xvi) Nuhaka River
- xvii) Pakarae River
- xviii) Ruakituri River
- xix) Raukokore River
- xx) Rereauira River
- xxi) Ruatahanga River
- xxii) Tapuaeroa River and tributaries
- xxiii) Taruheru River [river mouth to Hansen Road]
- xxiv) Te Arai River
- xxv) Turanganui river
- xxvi) Uawa River
- xxvii) Waiapu River
- xxviii) Waihuka River
- xxix) Waikanae Stream
- xxx) Waikohu River
- xxxi) Waikura River
- xxxii) Waimata River
- xxxiii) Waingakia river
- xxxiv) Waingata River
- xxxv) Waioeka River and all tributaries
- xxxvi) Waipaoa River
- xxxvii) Waitahaia River and all tributaries
- xxxviii) Waitangirua River
- xxxix) Whakarau River
- xl) Whangaparoa River
- xli) Wharekahika River
- xlii) Wharekopae River

13.7 Restricted Discretionary Activities

The following activities shall be restricted discretionary activities:

13.7.1 Subdivision that does not comply with General Rules 13.6.1 and 13.6.2

Council shall limit its discretion to matter a) below:

- a) Esplanade Reserves and Strips
 - i) The creation of an esplanade strip instead of an esplanade reserve.
 - ii) The width of any such esplanade reserve or strip.
 - iii) The appropriateness of the creation of an access strip.
 - iv) Conservation value of the site.
 - v) Public access to or along the coastal marine area or any strategically important river.
 - vi) The ability to gain access onto and between an existing or potential future reserve.
 - vii) Recreational opportunity.
 - viii) The waiver or part waiver of any such esplanade reserve or esplanade strip.

13.8 Financial Contributions

13.8.1 Financial contributions for access to the margins or rivers, lakes and the coastal marine area

Circumstances Imposed

Financial contributions of land (including easements) may be imposed on subdivision consent applications for access to the margins of rivers, lakes and the coastal marine area.

Provided that

- a. Discretion or control is reserved over financial contributions or over access to the margins of rivers, lakes and the coastal marine area.
- b. The applicant and landowner agree to the requirement for the contribution.

Purpose of Contributions

To enhance or provide access to the margins of rivers, lakes and the coastal marine area.

Manner for calculating contributions

The amount and nature of the contribution will be determined on the facts of each application with particular regard to the following factors:

- Whether there is existing public access along the margin of the river, lake or coastal marine area. A financial contribution to access this public access will generally only be imposed when there is a significant area of public access along the margin of the river, lake or coastal marine area.
- The availability or potential availability of other access to the river, lake or coastal marine area. Access that does not require financial contribution of land will be preferred and a financial contribution will only be considered when no other reasonable access is available.
- The minimum contribution of land required to provide safe access.
- Ongoing costs associated with obtaining the public access e.g. maintenance costs.
- The impact on the remainder of the site. A contribution will not be required if it would have a significant impact.

13.9 ANTICIPATED ENVIRONMENTAL RESULTS

- a) Preservation of specific environments along the coast, rivers, streams and other water bodies and their protection from the adverse effects of development and subdivision.
- b) Provision of appropriate public access to environments that the community use for recreation purposes, and which contribute to the community's social, economic and cultural well-being and health.