

## **16.4 ESPLANADE RESERVES, STRIPS AND ACCESS STRIPS**

*Refer to Policy sets 8.1, 8.2, 9.1, 9.2, 9.3, 13.1, 14.1 – 14.4.*

### **16.4.1 Scope of Section**

This section deals with the subdivision of land adjacent to:

- a river whose bed has an average width of 3 metres or more;
- a lake whose bed has an area of 8 hectares or more; or
- the coastal marine area.

For subdivision of land in these locations, regardless of zone, section 16.4 applies notwithstanding the subdivision rules of section 16.3.

Subdivision of land in any other location is regulated under section 16.3.

Section 16.4 provides for the circumstances where the Act allows an esplanade reserve or esplanade strip to be set aside or created upon subdivision. The general provision of the Act is that where any allotment of less than 4 hectares is created adjacent to the water areas listed above, an esplanade reserve of 20 metres in width is to be provided. However, the Act allows specific Plan rules, or any resource consent, to waive or amend the width of an esplanade reserve.

Where an allotment is 4 hectares or more, the Act provides that a plan rule may require an esplanade reserve or esplanade strip to be set aside, and that a resource consent may waive or amend the width of the esplanade reserve or strip.

The Act also provides that where an allotment of less than 4 hectares is created, no compensation is payable for esplanade reserves or esplanade strips of 20 metres or less in width. Compensation is payable to the registered proprietor for any width above 20 metres. Where an allotment of 4 hectares or more is created, and an esplanade reserve or esplanade strip is required, compensation is payable.

Except for reserves or strips obtained through the rules in this section or as a condition of a resource consent, the acquisition of other reserves (or obtaining agreements for esplanade strips or access strips), is through negotiation with landowners.

### **16.4.2 Esplanade Reserves, Strips and Access Strips on Subdivision**

#### **16.4.2.1 Restricted Discretionary Subdivision (Esplanade Reserves, Strips and Access Strips on Subdivision — Allotments less than 4 Hectares)**

The subdivision of land where one or more allotments of less than 4 hectares is created, including any balance allotments, adjacent to:

- a river whose bed has an average width of 3 metres or more; or
- a lake whose bed has an area of 8 hectares or more; or
- the coastal marine area;

is a restricted discretionary activity.

**A resource consent is required.** Consent may be refused, or conditions imposed, only in respect of the following matters to which the Council has restricted its discretion:

- (1) A 20-metre-wide esplanade reserve will be taken for any of the purposes in Section 229 of the Act of:
  - protecting conservation values;
  - enabling public access

**16.4.2.2 Restricted Discretionary Subdivision (Esplanade Reserves, Strips and Access Strips on Subdivision — Allotments 4 Hectares or More)**

- enabling public recreation;
- unless the Council determines otherwise after consideration of:
- (a) Where, having regard to Section 229 and Part II of the Act, it would not be appropriate to set aside an esplanade reserve because:
    - (i) in any working port area, there is a risk to security for activities that are permitted or authorised to operate in any part of the area that would otherwise be an esplanade reserve;
    - (ii) in any working port area, there is a risk to public safety in any part of the area that would otherwise be an esplanade reserve;
    - (iii) the land has little or no value in terms of the purposes of Section 229 of the Act;
    - (iv) there is already adequate protection in place for any value the land may have for purposes in Section 229 of the Act.
  - (b) Whether a reserve of greater than 20 metres width is required for purposes in Section 229 of the Act, and the compensation payable for that additional land.
  - (c) Whether the subdivision is a minor boundary adjustment or relocation.
  - (d) Whether the subdivision is for public utility or infrastructure purposes.
  - (e) Whether an esplanade strip will achieve the purposes in Section 229 of the Act and is preferable because the location is one where there is a high likelihood of movement of the margin through erosion, inundation or land movement.
  - (f) Whether any existing structure on land in the reserve entitlement affects the purposes in Section 229 of the Act, including consideration of the form and width of any reserve, access to and along it, and the use of it.
- (2) Whether, in setting aside or creating a reserve or strip, there is any need to restrict public access in order to:
- protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna;
  - protect Māori cultural values;
  - protect public health and safety;
  - ensure a level of security consistent with the purpose of a resource consent (or permitted activity); or
  - in other exceptional circumstances sufficient to justify the restriction notwithstanding the national importance of maintaining that access.
- (3) The assessment criteria set out in Schedule 16.3A.
- (4) The duration of the consent (Section 123 of the Act).
- (5) The purpose and timing of any review of consent conditions (Section 128).
- (6) Financial contributions, bonds and covenants in respect of the performance of conditions, and administrative charges (Sections 36 and 108).

**16.4.2.2 Restricted Discretionary Subdivision (Esplanade Reserves, Strips and Access Strips on Subdivision — Allotments 4 Hectares or More)**

The subdivision of land where one or more allotments of 4 hectares or more is created, including any balance lot, adjacent to:

- a river whose bed has an average width of 3 metres or more; or
- a lake whose bed has an area of 8 hectares or more; or

- the coastal marine area;

is a restricted discretionary activity.

**A resource consent is required.** Consent may be refused, or conditions imposed, only in respect of the following matters to which the Council has restricted its discretion:

- (1) Whether any land is to be set aside as an esplanade reserve or esplanade strip for any of the purposes in Section 229 of the Act of:
  - protecting conservation values;
  - enabling public access;
  - enabling public recreation;and any compensation is to be paid for that land.
- (2) Whether, if a reserve or strip is to be set aside or created, there is any need to restrict public access in order to:
  - protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna;
  - protect Māori cultural values;
  - protect public health and safety;
  - ensure a level of security consistent with the purpose of a resource consent (or permitted activity); or
  - in other exceptional circumstances sufficient to justify the restriction notwithstanding the national importance of maintaining that access.
- (3) The assessment criteria set out in Schedule 16.3A.
- (4) The duration of the consent (Section 123 of the Act).
- (5) The purpose and timing of any review of consent conditions (Section 128).
- (6) Financial contributions, bonds and covenants in respect of the performance of conditions, and administrative charges (Sections 36 and 108).

#### **16.4.20 Principal Reasons for Rules**

It is a matter of national importance to preserve the natural character of the coastal environment, wetlands, lakes and rivers and their margins; and to maintain public access to and along them (except wetlands). Values that contribute to natural character include the natural functioning of the water body, aquatic and adjacent habitats and water quality.

Council may seek to acquire esplanade reserves or esplanade strips to protect or enhance those values, or to provide for public access and recreation to and in such areas. Access strips may also be sought in some circumstances.

The Act entitles Council to take an esplanade reserve up to 20 metres wide when land adjacent to the sea or major rivers and lakes of the District is subdivided to allotments less than 4 hectares in area. It enables reserves to be sought where larger allotments are created, but makes compensation payable in those circumstances. Compensation is also payable when a reserve wider than 20 metres is sought from allotments less than 4 hectares.

The rule reflects the powers and limitations that the Act gives Council for obtaining reserves when land adjacent to major water features is subdivided.