

s 9(2)(a)

20-D-00931

Dear s 9(2)(a)

Thank you for your email of 8 June 2020 requesting the background papers on access strips being included in the RMA. As you have requested official information from the Ministry for the Environment (the Ministry), this response has been drafted under the Official Information Act 1982 (the Act):

*...I am interested in getting hold of the background papers and thinking behind the creation of access strips - that resulted in access strips being included in RMA. Can you get those for me please?*

*These access strips are, by definition, strips of land to provide access to movable bodies of water or movable esplanade strips (and there is a specific section in the RMA that sets out this 'movability' feature).*

*My principal interest is in the destination end of an access strip and its relationship with a movable esplanade strip, for example.*

*If esplanade strips move away from the original position of the destination end of the defined position of the access strip, then to continue to meet the intent of the RMA the access strip, by definition, must expand to complete the join with the esplanade strip.*

*Can you please confirm that is the intention of the RMA.*

*For the avoidance of doubt the same section describing the movability of the esplanade strip could have also included reference to access strips. Was this something that was overlooked in original RMA sections introducing esplanade strips? If deliberately not included in the RMA, what background papers relate to that and may I get copies please.*

*Or does the RMA need amending?*

*Or is the definition of access strip good enough to ensure the intent is clear and the destination end of the access strip moves, by definition, to ensure continuous connection with river or esplanade strip?...*

Three documents have been identified as within scope of your request, as listed in the attached schedule.

This information has been provided in the form of excerpts as the majority of the information in these documents are not in scope of this request in accordance with section 16(1)(e) of the Act. The complete Departmental Reports are publicly available through the Parliamentary Library. I am providing these as extracts to you, as we recognise that the copies in the Parliamentary Library are only available in hard copy, which may make them difficult to access.

Access strips were introduced to the RMA in the 1993 amendments. I have provided you with extracts from the Ministry for the Environment Departmental Report for Clause 2 and Clause 113 of those amendments.

Section 235 (Creation of Esplanade strips) of the RMA was amended again in 1997 and 2003 and I have also provided extracts from those Departmental Reports.

It is clear from the comments in the Departmental Report of 2000 (which provides the background to amendments made to the RMA in 2003) that it was understood that access strips would not move (although esplanade strips do) and that this approach was not an oversight at the time.

You have raised concerns over 'an esplanade strip moving away from the original position of the destination end of the defined position of the access strip' and questioned whether it was the intent of the RMA that the access strip expand to complete the join with the esplanade strip.

From the information found in the Departmental Reports, this was not an issue identified at the time of the amendments.

The Government has embarked on a comprehensive review of the Resource Management system, with the Independent Review Panel report, which forms the first part of this review, due this year. More information on the review is available at <https://www.mfe.govt.nz/rmreview>. Subject to further Cabinet decisions, future parts of this review may include more detailed examination of the effectiveness of tools such as esplanade reserves, esplanade strips and access strips. These detailed examinations could include consideration of issues such as the one you have identified.

I am not able to give you an answer on "whether the definition of access strip is good enough to ensure the intent is clear and the destination end of the access strip moves, by definition, to ensure continuous connection with river or esplanade strip". I am not able to offer legal advice and such matters can be dependent on local circumstances. This is a matter you would need to seek your own legal advice on.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

Please note that due to the public interest in our work the Ministry for the Environment publishes responses to requests for official information on our [OIA responses page](#) shortly after the response has been sent. If you have any queries about this, please feel free to contact our Executive Relations team: [ministerials@mfe.govt.nz](mailto:ministerials@mfe.govt.nz).

Yours sincerely



Liz Moncrieff  
**Acting Director, Natural and Built Systems**

**Document schedule**

| Document no. | Document date  | Content   | Decisions        | OIA sections applied |
|--------------|----------------|---|------------------|----------------------|
| 1            | April 1993     | Ministry for the Environment<br>Departmental Report on the<br>Resource Management<br>Amendment Bill April 1993              | Released in part | 16(1)(e)             |
| 2            | January 1997   | Ministry for the Environment<br>Departmental Report on the<br>Resource Management<br>Amendment Bill No 3                    | Released in part | 16(1)(e)             |
| 3            | September 2000 | Ministry for the Environment<br>Departmental Report on the<br>Resource Management<br>Amendment Bill as at<br>September 2000 | Released in part | 16(1)(e)             |

## Clause 75 - Creation of esplanade strips by agreement [section 235]

### Explanation

This clause amends section 235 to allow esplanade strips created by agreement to move with changes in the water body.

### Background

This rectifies an omission in section 44 of the Resource Management Amendment Act 1997. It ensures that esplanade strips created by voluntary agreement will be treated the same as other esplanade strips, by being movable when a river, lake or coastline changes.

### Submissions

Twenty submissions were received which specifically mentioned this clause. Nine councils (59, 85, 75, 107, 108, 145, 197, 329, 392) and LGNZ (231) supported the clause on the basis that it overcomes a previous omission.

The Waikato District Council (274) was opposed to the proposed amendment. The reason for this opposition was that the Council believed that people would be more reluctant to enter a voluntary agreement to provide the strip if the boundaries of that strip are not absolute.

The NZ Institute of Surveyors (217) previously supported the intention of this clause in the *Proposals* document, but has subsequently reconsidered its position. The Institute suggested that agreement to create an esplanade strip by a land owner may have been based on factors that included the position of the water body at that time. The land owner may have agreed to the creation with the intention that his or her property rights for the rest of the land were to be unaffected even though the water body may subsequently move. The Institute suggested it may be appropriate to retain the omission of section 233 in section 235(1). It also commented if a water body moves there is nothing to stop negotiations between the local authority and the land owner for a new esplanade strip.

In comparison, the Resource Management Law Association (185) and the Consulting Surveyors of NZ (305) supported the change.

Two individuals (66, 188) supported the amendment as it overcomes a drafting error. MC and AE Ward (78) believed that the whole area of esplanade reserves and related provisions should be simplified and redrafted. They also commented that when a water body has 'moved' insurmountable difficulties could arise for affected landowners, and all agreements for access strips and esplanade reserves should be renegotiated.

Three submissions were received from tangata whenua. Support for the change was expressed from the Tauranga Moana District Maori Council (76) and the Tainui Awhiro Ngunguru Te Po Ngunguru to Ao Management Committee (368). Te Ruunanga A Iwi O Ngati Tamatera (372) also supported the change, but requested that consultation with tangata whenua be included if previous/recent Crown land is involved.

### Analysis

The majority of submissions were in support of the proposed change.



The amendment contained in clause 75 has been promulgated because of an anomaly in the Act. It is considered that all esplanade strips should be the same, otherwise it is confusing as to whether the boundaries are movable or not.

The concerns raised by the Waikato District Council and the NZ Institute of Surveyors are noted. It is pointed out however, that access strips, esplanade reserves or conservation covenants are possible alternatives to esplanade strips. They all have fixed boundaries that do not move with changes in a water body. If a landowner is not happy with a moving boundary he or she will not agree to a voluntary esplanade strip in the first place.

The amendment will not apply retrospectively, so that existing esplanade strips that have been created voluntarily under the existing legislation will not move with changes to the water body.

### **Recommendation**

Proceed with clause 75 to allow esplanade strips created by agreement to move with changes in the water body.

Released Under the Official Information Act 1982

## **Clause 40 Creation of esplanade strips by agreement** **[section 235]**

### **Explanation**

Clause 40 amends section 235 of the Act, which provides for the creation of esplanade reserves by agreement. The amendment makes it clear that esplanade strips can be created by agreement at any time and not only as a result of a subdivision. It does this by inserting the words “(except section 230(2))” after the expression “234” in section 235.

### **Background**

Esplanade strips are a flexible technique for protecting riparian areas, and were introduced into the Act by the Resource Management Amendment Act 1993. The land involved remains in private ownership, controls can be tailored to the site, survey costs are lower, and they move with changes to the water body.

Unfortunately, there is a conflict with the way esplanade strips are provided for in the Act. Section 235 states that an esplanade reserve may be created at any time by agreement between the registered proprietor of the land and the local authority. Section 235 also states that sections 229 to 234 and sections 236 to 237D apply with all necessary modifications. These sections outline the process for creating, changing, varying and cancelling esplanade strips, and identifying them on survey plans.

The problem is that section 230(2) states that the provisions of sections 229 to 237H shall only apply where section 11(1)(a) applies to the subdivision. The Register-General of Land's interpretation of this provision is that the creation of esplanade strips is limited to situations involving a subdivision. At least one District Registry Office is refusing to identify esplanade strips on survey plans in situations where the local authority and landowner have agreed to create an esplanade strip but a subdivision is not involved. The creation of esplanade strips by agreement is therefore being stymied.

### **Submissions**

This clause was supported by a number of local authorities (3, 53, 56, 64, 101), as well as Port Companies (38), Institute of Surveyors (35), Auckland Civic Trust (54), Local Government Assn (73) and Forest & Bird (Far North) (36W).

Waitakere City Council (101) considered that:



*"this is a change which can considerably enhance this Council's ability to agree with landowners to create esplanade strips".*

### **Analysis**

No submissions were made against this clause. Clause 40 makes clear that esplanade strips can be created by agreement at any time and not just as a result of subdivision, which was what was originally intended.

### **Recommendation**

No change to clause 40.

Released Under the Official Information Act 1982



**The Ministry for the Environment  
Departmental Report on the  
Resource Management  
Amendment Bill**

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**APRIL 1993**

**CONFIDENTIAL**

Ministry for the Environment



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PART I

INTERPRETATION AND APPLICATION

PROPOSED CLAUSE 2(0A) - Access Strip

COMMENT

This clause relates to section 2(1) of the Act. Hauraki District Council (86W) have suggested that a definition of esplanade strip be inserted in the Act.

The terms "esplanade reserve" and "esplanade strip" are already defined in the Bill. Therefore, for consistency there is merit in defining this term.

By referring to the purpose of the access strip in the definition it will not be necessary to repeat it in proposed section 237B.

RECOMMENDATION

Insert a definition of "Access strip" in clause 2 along the following lines:

"'Access strip' means a strip of land created by the registration of an instrument in accordance with section 237B for the purpose of allowing public access to any esplanade reserve, esplanade strip, other reserve, or land owned by the local authority or by the Crown (but excluding all land held for a public work except land held, administered, or managed under the Conservation Act 1987 and the Acts named in the First Schedule to that Act)."

CLAUSE 2(1) - Amendment

This clause relates to section 2(1) of the Act. This clause inserts a new definition of the word "Amendment" which is used in the First Schedule to make it clear that this is different from a "variation" which is also used in the First Schedule. No submissions referred to this clause.

RECOMMENDATION

No change.

CLAUSE 2(2) Bed

COMMENT

This clause relates to section 2(1) of the Act and inserts a new definition of the word "bed". A large number of submissions commented on the clause. The principal changes are the



introduction of the concept of "annual average fullest flow " as distinct from just "fullest flow" in the Act (in relation to rivers), and specific reference to artificially controlled lakes.

The word "bed" in relation to rivers is used in two contexts.

Firstly, it is used in terms of section 13 - Restrictions on certain uses of beds of rivers and lakes. This section requires regional council consent for structures and other activities in the beds of rivers and lakes primarily to ensure activities do not have adverse effects on the waterbody and cause problems such as erosion and flooding. In this context a wide definition is desirable and the Act achieves this by referring to the "fullest flow" of the river.

Secondly, it is used in terms of the esplanade reserve requirements and defines one boundary of any such reserve. In this context a narrower definition is desirable so the Bill refers to "average annual fullest flow".

Defining the bed of a river is very difficult given the diversity of types of river (eg braided) and that the bed can be constantly changing depending on flow. The term was undefined in earlier legislation. For erosion and flooding control purposes an all embracing definition of "watercourse" was used.

Many commented that the concept of "annual average" fullest flow in respect of rivers (and "annual average" highest level in respect of lakes) would fail because there was insufficient hydrological data for most rivers to determine this [4, 5, 6, 7, 8, 9, 65, 66, 69, 77, 90, 96].

There were a range of suggestions on how the amendment should be reworded. The Tararua Tramping Club [90] and Christchurch City Council [65] requested that the original definition of bed in the Act (fullest flow) be retained. Clutha District Council [75] and Northland Regional Council [70] prefer annual flow. Matamata-Piako District Council [66] and Federated Farmers [61] preferred lowest annual flow. Auckland Regional Council [29], Central Hawkes Bay District Council [24W] and Environmental Futures [100] supported the provisions in the Bill.

The Local Government Association [69] and Taranaki Regional Council [6] preferred a definition based on permanent riparian vegetation: "in relation to any river, the space of land which surface waters cover, either continuously or intermittently, bounded by the point of change in topography where the river channel abuts permanent riparian vegetation but not including areas subject to periodic inundation split from the channel".

"Average annual fullest flow" was introduced because concern that the reference to "fullest flow" in the Act could be interpreted as the fullest ever flow. Case law, notably Kingdon v Hutt River Board (1904) 25 NZLR 145 has tended to favour the annual fullest flow. It was never intended that hydrological data would be required as this will only be available for major rivers. For



most rivers vegetation will indicate approximately where the annual fullest flow is. It may be that the term "average" creates an impression that statistical data must be used.

For artificial lakes the Bill proposes the bed extend to the maximum permitted operating level. NZEC [63] supports the amendment.

There are several options in respect of the definition of bed. Reference to fullest flow in the Act could be retained or the definition deleted and case law relied on, as under former legislation. It is not considered that average annual lowest flow or average flow are practical as in the former case all rivers that are dry for part of the year would be excluded and in the latter half of the time the river would exceed its bed.

It is considered the term should be retained and the definition split so it is narrow for the purposes of subdivision - average annual fullest flow, and broad for the rest of the Act - fullest flow. This is generally the way the terms were interpreted under former legislation.

If the term "average annual fullest flow" is to be used (at least in respect of esplanade reserves) it is considered that the word "average" needs to be removed to avoid the confusion with statistical data. Although not recommended, reference to permanent riparian vegetation could be introduced to ensure this is used to help determine the bed. Good practice should ensure this.

#### RECOMMENDATION

Amend the definition of "bed" in the Bill by deleting proposed paragraphs (a) and (b) and inserting the following paragraphs:

"(a) In relation to any river-

"(i) For the purposes of sections 108(1), 405, 405A and Part X the space of land which the waters of the river cover at its annual fullest flow without overtopping its bank

"(ii) In all other cases, the space of land which the waters of the river cover at it's fullest flow without overtopping its bank; and

"(b) In relation to any lake, except a lake controlled by artificial means-

"(i) For the purposes of section 108(1), 405, 405A and Part X the space of land which the waters of the lake cover at its annual highest level without exceeding its margin; and

"(ii) In all other cases, the space of land which the waters of the lake cover at it's highest level without exceeding its margin;"



The Department of Conservation is not restricted in assisting local authorities to meet any compensation costs. However, as the decision to take the reserve rests with the council, it would be inappropriate for the Crown to meet all the costs. It would be possible to treat the coast differently. However, this could place a major burden on landowners undertaking small retirement block type subdivisions on large allotments which abut the coast.

Special exemptions for NZ Rail, ECNZ, or Watercare are not considered appropriate and can be addressed through the district plan process. The Bill repeals section 234 of the Act so esplanade reserves can be treated as part of any general reserve requirement.

A case can be made for saving directions under earlier legislation to exempt the reserve requirements as transitional rules in the district plan. This will allow time for the community to develop appropriate rules in the district plan.

#### CLAUSE 113 - Esplanade Reserves

#### PROPOSED SECTION 229 - Purposes of esplanade reserves and esplanade strips

#### COMMENT

This section spells out the purpose of esplanade reserves and esplanade strips. The purposes of conservation, access, and recreation are the same as those in the existing section 229 of the Act, but the word "or" rather than "and" is used between the three purposes so that a reserve could be created solely for the purpose of conservation, access, or recreation, whereas at present the purpose is always all three. The amendment was intended to cover the situation of say a port where you could have high access value but nil conservation values.

Environmental Futures [100] supports the ability to distinguish between the purposes of reserves, but a number of individuals [10,12W,13W,29W], Fish and Game Councils [35 and 70W], the Tararua Tramping Club [90], and WATER Action Group [97] opposed the introduction of the word "or". They saw it as a weakening of the purpose of the reserves, a downgrading of their access value and suggested that where conservation values were permanent the other categories of reserves under the Reserves Act 1977 should be used.

Most esplanade reserves that are created will serve all three purposes and this is allowed by the wording "one or more purposes". The preeminence of any particular purpose will vary on the circumstances. Esplanade strips may well be created solely for access purposes. It is considered that the amendment will assist in the creation of more reserves and strips and their purpose will be better focused.



RECOMMENDATION

No change.

CLAUSE 113

PROPOSED SECTION 230 - Requirement for esplanade reserves or esplanade strips

COMMENT

This is a critical section. It requires esplanade reserves on allotments less than 4ha and allows for reserves and strips to be required on allotments of 4ha or more.

Section 230 has 5 subsections and these are discussed in turn.

Subsection (1) provides that for the purposes of sections 229 to 237G (esplanade reserves) the size of any allotment is determined before any esplanade reserve or strip is set aside. As discussed under clauses 39 and 137, and as raised by the Auckland City Council [64] wherever the 4ha split is referred to the section should be included in section 231(1). The sections references are 77, 405A and Clause (5) Part II of the Second Schedule.

Subsection (2) provides that sections 229-237G only apply to subdivisions restricted under section 11(1)(a). Christchurch City Council [65] had submitted that the wording should be "where section 11(1)(a) applies to the subdivision" rather than "where the subdivision is restricted under 11(1)(a)". This change is considered appropriate.

Subsection (3) states that subject to any rule in a district plan on allotments less than 4ha a 20m esplanade reserve shall be created.

A number of submissions [30,36,113W] noted that if section 104A(2) is deleted (this is recommended - see clause 50(2)), this section will also be subject to any resource consent. Submissions [45 and 64] also noted that the words "in width" should be added after the reference to 20m.

Some submissions [34, 91W] wanted reference to esplanade strips included in subsection (3). This is not considered appropriate as the presumption is that a reserve is required and a rule in a plan or a resource consent can require either a strip or waive the requirement for the reserve.

Subsection (4) states that the requirements of subsection (3) (i.e. allotments of less 4ha) only apply to rivers wider than 3 metres or lakes larger than 8ha. Some submissions [63, 99 and 100] wanted the 3m/8ha requirement to apply to allotments greater than 4ha. This is not considered appropriate where compensation is payable. The determining factor should be the value of any reserve or strip in terms of access and conservation purposes, rather than the size of the river or lake.



Some submissions [45,64,65,69,93W] submitted that the wording of the subsection was ambiguous and, in particular, whether the word "throughout" referred to the length of the stream or the length of the allotment. This should be clarified.

Subsection (5) provides that esplanade reserves or esplanade strips may be required on allotments of 4ha or more if a rule in a plan so requires. Again, if proposed section 104A(2) is deleted, the subsection would be subject to any resource consent.

#### RECOMMENDATIONS

- 1 Amend proposed section 230(1) by omitting the words "sections 229 to 237G" and substituting the words "sections 77, 229 to 237G, 405A, and clause 5 Part II of the Schedule"
- 2 Amend proposed section 230(2) by omitting the words "the subdivision is restricted under section 11(1)(a)" and substituting the words "where section 11(1)(a) applies to the subdivision".
- 3 Amend proposed section 230(3) by
  - (i) inserting the words "or a resource consent," after words "section 77(1)," and
  - (ii) inserting the word "width" after the words "20 metres".
- 4 Amend proposed section 230(4) by omitting the words "throughout, or adjoining an allotment of 3 metres or more" and substituting the words "of 3 metres or more throughout or adjoining an allotment"
- 5 Amend proposed section 230(5) by inserting the words "but subject to any resource consent," after the words "so required,".

#### CLAUSE 113

#### PROPOSED SECTION 231 - Esplanade reserves to vest on subdivision

#### COMMENT

Proposed section 231 requires esplanade reserves to vest in the local authority where they are shown on survey plans, and that such reserves are subject to the Reserves Act 1977. No submissions were received specifically on this section, but the Royal Forest and Bird Protection Society [96] suggested that in the case of allotments over 4ha, esplanades reserves should not be required to be surveyed.

The Land Transfer Act already allows for surveys from aerial photographs where appropriate and it is considered this power is sufficient to overcome ground surveys where they are not required. See the appended letter from the Registrar General of Lands.

#### RECOMMENDATION

No change.



PROPOSED SECTION 232 - Creation of esplanade strips

COMMENT

Section 232 deals with the creation of esplanade strips.

Subsection (1) provides that the esplanade strip is created by the registration of an instrument between the territorial authority and the person seeking the subdivision consent. The NZ Institute of Surveyors [45] has submitted that the words "seeking the subdivision consent" should be replaced with the words "subdividing owner". This is a sensible suggestion.

Subsection (2) states certain matters relating to the instrument that creates an esplanade strip including (d) that it creates an interest in land capable of registration under the Land Transfer Act. The NZ Institute of Surveyors [45] have submitted that the words "capable of registration" are confusing and that the words in section 109(1)(a) and (b) be used. The Registrar-General of Lands considers the wording in the Bill is appropriate.

Subsection (3) provides that the territorial authority shall publicly notify the creation of an esplanade strip and the terms and conditions included in the instrument creating the strip. Submissions [6,69,93] have noted that this will be costly, is inappropriate where the strip is created for conservation purposes only, and it will not be an effective way of conveying the existence of the strip to the public. They submit that, at most, strips should only need to be publicly notified where they are for access and that the notice should only say that the terms and conditions can be inspected at the council office.

New Plymouth District Council [93] suggests that an annual list of reserves and strips be notified. It is noted that there is no requirement to notify the existence of an esplanade reserve. It is considered that the notification requirement for esplanade strips is likely to be of little value and that it is more appropriate for the council to be required to maintain a register of all existing reserves and strips under section 35.

Subsection (4) provides that where a strip is created for the purpose of access or recreation it can be closed pursuant to section 237C. Closure comments are discussed under that section.

Subsection (5) spells out matters the territorial authority must consider in preparing the instrument. No specific submissions on this subsection were received. However, Federated Farmers [61] did express general concern that the interests of the landowner were not included. They are covered by paragraph (d). A link to section 229 and the Tenth Schedule is required.

Subsection (6) provides that the instrument may include any fencing requirements with the obligation to pay falling on the party that requires the fence to be provided or removed, unless the parties agree otherwise, and that other matters can be included other than matters which relate to third parties. The exclusion of such other matters is not required.



The NZ Institute of Surveyors [45] consider that paragraph (a) should clearly refer to the erection of a fence. This is considered to be clear. ECNZ [63] have noted that the term "parties" in paragraph (d) is unclear. This is a valid concern.

Subsection (7) provides that an esplanade strip will not be required to be surveyed in terms of the Land Transfer Act. No specific submissions on this subsection were received. Some additional words are required to ensure the strip is adequately described. The Registrar-General of Lands has agreed to assist the Ministry in drafting the appropriate prescribed form.

#### RECOMMENDATIONS

- 1 Amend proposed section 232(1) by
  - (i) omitting the words "esplanade purpose" and substituting the word "purpose"; and
  - (ii) omitting the words "person seeking the subdivision consent" with the words "subdividing owner".
- 2 Delete proposed section 232(3).  
[Add to section 35(5) - new clause 22A -  
a new paragraph (ja):  
"(ja) In the case of a territorial authority, records of all esplanade reserves, esplanade strips, and access strips in the district;".]
- 3 Amend proposed section 232(5) by
  - (i) adding the words "in the 10th Schedule to modify or" after the words "which restrictions"; and
  - (ii) adding the words "The purpose or purposes of the strip, including" in paragraph (c) before the words "where the strip".
- 4 Amend proposed section 235(6)(b) by
  - (i) omitting the word "parties" and substituting the words "territorial authority and subdividing owner"; and
  - (ii) deleting the words ",excluding matters which relate to third parties"
- 5 Amend proposed section 235(7) by adding the words "be clearly identified, but" after the words "esplanade strip shall".

#### PROPOSED SECTION 233 - Effect of change to boundary of esplanade strip

##### COMMENT

This section deals with the effect to a change of a boundary of an esplanade strip. It provides that where the boundary of an allotment moves (eg through erosion or accretion), the boundary of the strip also moves. As noted in the general comments on esplanade reserves, a large number of submissions supported this concept of movability but would prefer it to apply to esplanade reserves [including 54, 81, 96, 97].



Federated Mountain Clubs [8] supported the concept of moveable strips. Some submissions [34,45,86W] were concerned that the strip may be able to move onto adjacent property, although the strip clearly only applies to an allotment it is subject to an instrument creating the strip. It was not intended and is not desirable for other allotments to be so affected. A minor wording change will clarify the matter.

#### RECOMMENDATION

In subsection (1) replace the words "an allotment" with the words "the allotment".

#### CLAUSE 113

#### PROPOSED SECTION 234 - Removal or alteration of esplanade strips

#### COMMENT

This section deals with the removal or alteration of esplanade strips. The NZ Fish and Game Council [81] consider that there should be no provision to revoke an esplanade strip. This is considered to be too inflexible. For example, it should be revoked if an esplanade reserve is created at a later date.

A number of submissions [6,45,93] note that the requirement to publicly notify any proposed variation or removal of an esplanade strip is too onerous in the case of minor variations. It is considered that a non-notification process is required for minor variations similar to that for alterations of resource consents (section 127 - 132).

Wanganui District Council [34] have submitted that with the creation of esplanade strips to be publicly notified under section 232(3), any alteration or removal should be similarly notified. If section 232(3) is deleted (as recommended), there is no need to make an amendment on this point. If section 232(3) is to remain, then any alteration or removal should be notified.

The Maruia Society [11] suggest that the matters the territorial authority considers under subsection (6) should be subject to Part II and a further method added that the Council shall have regard to any other method that will achieve a net gain in relation to the purpose of the strip.

Part II clearly already applies and specific reference to a net gain is not considered necessary. The Royal Forest and Bird Protection Society [96] have suggested that the council's considerations should be subject to the purpose of esplanade strips in section 229. This is already provided in subsection (6)(b). However, it is considered the matters in proposed subsection (6)(a) and (b) should actually link into the proposed section 232(5) and (6) for consistency.



ECNZ [63] have submitted that as well as the registered proprietor being able to apply to remove or vary the strip, other persons, including lessees should also be able to apply. This is considered appropriate.

For user friendly purposes, a description should be provided in subclause 8.

RECOMMENDATION

- 1 Amend section 234(1) by omitting the words "the registered proprietor for the time being of any" and substituting the words "any person having an interest in".
- 2 If subsection 232(3) is not deleted (deletion is recommended) include a further subsection requiring the decision on any application to remove or vary the esplanade strip to be publicly notified.
- 3 Amend proposed section 234(4) by omitting the words "the territorial authority shall publicly notify the application in accordance with section 93" and substituting the words "the provisions of sections 127-132 shall apply as appropriate with all necessary modifications".
- 4 Delete proposed section 234(5).
- 5 Add a description of the sections (113, 114, 115, 120 and 121) referred to in subsection (8) as follows:  
"(which provide for the making and notification of decisions and the making of appeals)"

CLAUSE 113

PROPOSED SECTION 235 - Creation of esplanade strips by agreement

COMMENT

Proposed section 235 allows for the creation of esplanade strips by agreement between the local authority and landowner at any time.

This section was generally supported [3, 6, 54, 69, 2W]. Taranaki Regional Council (6) said:

"This section will provide a key mechanism through which water quality objectives may be achieved in partnership with registered proprietors. The Taranaki Regional Council intends to use this provision to the full."

Some submissions [3, 54, 81] said the provision should also apply to reserves. There is nothing stopping a landowner gifting a reserve and the proposed amendments in clause 7 to Section 11 will remove the need to obtain a subdivision consent for such gifts. No change to the Bill is considered necessary.



ECNZ [63] submitted that any such agreements should be publicly notified and open to objections to enable those with an interest to input into any agreement. An esplanade strip does not affect any existing encumbrances on the title. No change is considered necessary.

The Hawkes Bay Regional Council [2W] has questioned the use of the term "local authority" rather than "territorial authority" in the section. Although esplanade strips will primarily be created at the time of subdivision, as Taranaki Regional Council [6] note, they should be available to regional councils if the landowner agrees.

Submissions [3, 99] suggested compensation should be permitted in such agreements. This could clearly be part of any "agreement" and no change is considered necessary.

As there is no compulsion when esplanade strips are created by agreement there should be no reference in this section to proposed sections 237E, 237F and 237G.

#### RECOMMENDATION

Amend proposed section 235 by omitting the expression "Section 237G" and substituting the expression "Section 237D".

#### CLAUSE 113

#### PROPOSED SECTION 236 - Where land previously set aside or reserved

#### COMMENT

Proposed section 236 provides that where land is subdivided and there is an existing esplanade reserve (or similar reservation) of less than the width of any required esplanade reserve, the difference shall be taken from the land being subdivided. It is a "topping up" provision. The section is similar to the existing Section 231 and also Section 289(2) of the Local Government Act 1974.

Some submissions [59, 93, 24W] have questioned the need to reopen the debate of whether 20m is required each time land is subdivided. This is considered appropriate given the presumptions that reserves are only required on allotments less than 4ha and the ability to provide for waivers and reductions in width through rules in plans.

The NZ Institute of Surveyors [45] has submitted that it is inappropriate to use the term "esplanade strip shall be shown on the plan" as it implies the need for a survey. It is considered that just because a strip is "shown" on the survey plan there is no requirement to survey it. Proposed section 232(7) clearly states no survey is required.



It is considered there is a difficulty with subsection (2) and (3) as it suggests a further esplanade strip will always be required where there is an existing esplanade strip. If proposed section 104A(2) is deleted (as recommended) a reference to resource consents is required in all subsections.

RECOMMENDATION

- 1 Amend proposed section 236(1) by adding the words "subject to a rule in a district plan or any resource consent" after the words "paragraph (a) has been previously reserved or set aside,"
- 2 Amend proposed section 236(2) by adding the words "subject to a rule in a district plan or any resource consent".
- 3 Amend proposed section 236(3) by adding the words "subject to any resource consent".

CLAUSE 113

PROPOSED SECTION 237 - Approval of survey plans where esplanade reserve or esplanade strips required

COMMENT

This section concerns the approval of survey plans where esplanade reserves or esplanade strips are required.

The New Plymouth District Council [93] consider it inappropriate to require esplanade reserves and esplanade strips in the case of cross-leases where land has already been subdivided. District plans may exempt reserve and strip requirements in such circumstances but it is not considered appropriate for the Act to do this. It would merely encourage the use of such types of subdivision.

The NZ Institute of Surveyors [45] has submitted that it needs to be clear how esplanade strips are shown on survey plans. Subsection (2) is considered adequate and the Chief Surveyor can issue instructions.

The NZ Institute of Surveyors [45] further submit that it is not appropriate to suggest esplanade strips are created on survey plans. Suitable amendments are recommended below. They consider "significant redrafting is required to take account of the unique nature of esplanade strips". The Registrar - General of Land has indicated the provisions in the Bill are adequate with the recommended amendments. The Ministry will consult with the Registrar-General of Land and Chief Surveyor in preparing the prescribed form for esplanade strips.



RECOMMENDATION

- 1 Amend section 237(3)(b) by omitting the words "set aside or create" and substitute the word "show".
- 2 Amend section 237(4)(b) by omitting the words "set aside or created" and substituting the word "shown".

CLAUSE 113

PROPOSED SECTION 237A - Vesting of ownership of land in coastal marine area or bed of lake or river in Crown or territorial authority

COMMENT:

Proposed section 237A concerns the vesting of ownership of land in the coastal marine area and the bed of lakes and rivers.

Section 235 of the Act presently requires all such land to vest in the Crown. Proposed section 237A only requires such land to vest if an esplanade reserve is taken or a condition is imposed specifically requiring the bed to vest.

A number of submissions [42, 90, 97, 12W, 13W, 24W, 29W] have complained that the section gives the Minister of Conservation the discretion to avoid vesting land below mean high water springs when an esplanade reserve is created. This is not correct. Section 237A (2)(c)(i) always requires the bed to rest in the Crown in such circumstances. The Minister only has a discretion where no reserve is created. Generally the bed should not be required to vest if no reserve is taken as adequate controls are placed on the use of this land by section 12.

Hamilton City Council [11W] have submitted that the beds of water bodies should vest automatically in regional councils rather than vest in territorial authority and provide the ability to transfer ownership. It is considered Section 237A needs to provide certainty as to whom the bed is vested in. As the reserve is vested in the territorial authority, and they approve the subdivision consent, it is considered the bed should go to the territorial authority and an ability to transfer is provided (Section 237D).

New Plymouth District Council [93] and NZ Institute of Surveys [45] submit that Section 237A(1)(c)(iii) is unclear. It is considered that the reference to land in section 108(9) makes it clear that land can be required at the time of subdivision and this includes land under water.

The NZ Institute of Surveyors [45] has also submitted that the words "adjoining the esplanade reserve" are inconsistent with the rest of the section. This needs correction.



RECOMMENDATION

- 1 Amend proposed section 237A(1) by -  
(i) omitting the words "area of land" in paragraph (b) and substituting the word "allotment" and  
(ii) adding the words "or as required by paragraph (c)(ii)"
- 2 Amend proposed section 237A(2) by -  
(i) omitting the word "land" and substituting the word "allotment" and  
(ii) adding the words "or as required by paragraph (c)(ii)".

CLAUSE 113

PROPOSED SECTION 237B - Access strips

COMMENT

Proposed section 237B provides for the establishment of access strips. A number of submissions [3, 35, 42, 67, 79, 90, 29W, 32W, 70W] were concerned that the tenure of access strips was limited to the ownership of the land. This was not intended and can be clarified by removing the words "for the time being".

It is considered better to link into the appropriate esplanade strip provisions rather than repeat these.

There is a need to link into section 234 to allow access strips to be removed or altered through a public process.

Further technical changes suggested by the Registrar-General of Land are included.

RECOMMENDATION

- 1 Amend proposed section 237B(1) by omitting the words "owner for the time being of an estate or interest in land" and substituting the words "subdividing owner".
- 2 Delete proposed section 237B(2) and insert the following subsection:  
"(2) Any such easement shall  
(a) be executed by the local authority and the subdividing owner;  
(b) be in the prescribed form; and  
(c) contain the relevant prohibitions in accordance with the Tenth Schedule."
- 3 Delete proposed section 237B(3) if the recommendations under proposed section 232 are followed and note change to section 35.



- 4 Delete proposed section 237B(6) and insert the following subsections:  
"(4) Section 232(4) - (b) with all necessary modifications, shall apply to the creation of an access strip."
- 5 Delete proposed section 237B(5) and insert the following subsection -  
"(5) Section 234 with all necessary modification, shall apply to any access strip to allow it to be removed or altered."

CLAUSE 113

PROPOSED SECTION 237C - Closure of strips to public

COMMENT

Proposed section 237C provides for the closure of esplanade strips and access strips.

A number of submissions [37, 67, 81, 90, 97, 29W] criticised the lack of a presumption for public access and that the provisions allowing for closure could easily be abused. This is a valid concern.

The Forestry Sector [22, 53] want to ensure strips can be closed during periods of high fire risk and ideally should be closed automatically. This could be provided for in the instrument creating the strip.

The NZ Institute of Surveyors [45] expressed concern over who would erect signs and enforce closure. Closure provisions are addressed in the Tenth Schedule and will be in the prescribed form. Closure during emergencies needs to be defined. This can be done using the words in section 330.

It is considered that proposed subsection (2) is better placed in the Tenth Schedule, and that proposed subsections (3) and (4) are unnecessary. However, where the landowner closes a strip in an emergency it is considered desirable that they notify the local authority.

RECOMMENDATION

- 1 Amend section 237C(1) by adding the words "which are likely to cause loss of life, injury, or serious damage to property".
- 2 Delete Section 237C(2)-(3)
- 3 Insert new section 237C as follows:  
"(2) When the landowner closes a strip for emergency purposes he or she shall notify the local authority."



PROPOSED SECTION 237D

COMMENT

Section 237D allows for the transfer of esplanade reserves and the beds of water bodies to a regional council or the Crown.

Wanganui District Council [34] and Southland District Council (51W) have suggested that the issue of reimbursement of any compensation should be addressed.

Any transfer is by agreement so reimbursement can be the subject of any such agreement.

RECOMMENDATION

No change.

PROPOSED SECTIONS 237E AND 257F - Compensation for taking of esplanade reserves

COMMENT

These sections deal with the issue of compensation for esplanade reserves and esplanade strips. Proposed section 237E deals with allotments of less than 4ha and 237F with allotments of 4ha or greater. Submissions generally addressed these two sections at the same time. The Bill provides that compensation is not paid in the case of allotments of less than 4ha where reserves or strips of less than 20m are taken. In the case of reserves or strips of greater than 20m width for allotments less than 4ha and allotments of 4has and greater compensation is payable.

Some submissions wanted full compensation to be paid for esplanade reserves on allotments less than 4ha [12, 65].

Many submissions [42, 66, 34, 81, 82, 86, 96, 10W, 24W, 91W] were opposed to local authority paying compensation for esplanade reserves and esplanade strips. Some wanted all compensation abolished [75W]. Others wanted compensation only to be paid for reserves on rivers and possibly lakes [6, 82, 93, 42, 96, 91W] and not the coast; or the Crown to pay compensation [86, 24W].

Submitters wanting compensation to be waived on the coast said that the coast has national importance, is the boundary of farms (so does not disrupt management) and was treated differently to rivers under the Local Government Act 1974. These points are all true but such an exemption from compensation could still lead to a "land grab" where significant amounts of land are taken and significant survey costs incurred, where a person is undertaking a minor subdivision. This amendment is designed to stop this.