

1. Suggested Answer

The land development company has requested you prepare a report to assist them in understanding how the river boundaries will impact the future development of the three parcels of land. They have requested that you specifically address the following aspects.

- 1 The Council's District Plan allows for either an esplanade strip or esplanade reserve to be provided. Considering the purpose of the esplanades as described in the District Plan, detail the differences between esplanade strips and esplanade reserves and the impact each may have on the potential development of the land.

Esplanade Strips

Definition of Esplanade Strip from RMA

"esplanade strip means a strip of land created by the registration of an instrument in accordance with section 232 for a purpose or purposes set out in section 229"

Esplanade strips may be required by a rule in a plan, when land is subdivided, reclaimed, or developed; or when a road is stopped. They may also be required by a condition of consent for reclamation. Additionally, an esplanade strip may be created voluntarily at any time by agreement.

Esplanade strips are a legal instrument created between a land owner and a territorial authority. They are registered on the title, but the land within the strip remains in the ownership of the land owner. 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. The form of the agreement and standard restrictions to be imposed on an esplanade strip are defined in Schedule 10 of the RMA.

An esplanade strip can include provisions to exclude access by the public during certain times or under certain conditions (as prescribed in Form 31 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003

Unlike esplanade reserves, the width of an esplanade strip remains unchanged within the same allotment. So if a river bank is eroded by 2 metres, the width of the esplanade strip then extends beyond its old boundary by 2 metres to offset the lost ground.

Esplanade strips can be varied or cancelled by a territorial authority subject to the procedure set out in s234 of the RMA. Similarly where a condition applies, an esplanade strip can be changed, reviewed and cancelled under s127-132 of the RMA.

Esplanade Reserves

Definition of Esplanade Reserve

esplanade reserve means a reserve within the meaning of the Reserves Act 1977—

(a)

which is either—

(i)

a local purpose reserve within the meaning of section 23 of that Act, if vested in the territorial authority under section 239; or

(ii)

a reserve vested in the Crown or a regional council under section 237D; and

(b)

which is vested in the territorial authority, regional council, or the Crown for a purpose or purposes set out in section 229

Esplanade reserves

Esplanade reserves may be required when land is subdivided, when land is reclaimed, when land is developed (through the use of conditions), or when a road is stopped under the LGA 1974. Esplanade reserves can also be created voluntarily.

They are classified as reserves under the Reserves Act 1977 and land ownership is transferred upon deposit (completion) of the subdivision plan to a territorial authority.

The boundary of an esplanade reserve is measured from its bank where it is a river or stream, or its margin where it is a lake, or from the mean high water springs (MHWS) where it is in a coastal area. In all cases the landward boundary is a fixed survey line. Accordingly, the landward boundary does not change as the water boundary accretes or erodes.

Impact on Potential Development

Esplanade Strips

- Although certain restrictions, the area of land encompassed by the esplanade strip remains part of the allotment area
- Potentially the area within the strip can be incorporated into the allotment areas which could be an advantage on subdivision as this could allow for more allotments
- The allotments fronting the river will have a river boundary
- Boundary of esplanade strip would move with river boundary and potentially move more into the property if future erosion was to occur
- Considering the purpose of the esplanade is for access and recreation, it would be anticipated public access would be available through the respective land owners' allotments
- Land owners will need to maintain the area of land within the strip
- Restrictions could be a disadvantage to potential purchases

Esplanade Reserves

- Land area not available to the allotments
- No direct access to river, but potentially access would be available through the esplanade reserve
- Lose AMF rights to the river
- Fixed boundary between allotment and the esplanade reserve

Although compensation is not available for the provision of esplanades where allotments are less than 4 ha, potentially you maybe able to look to compensation if esplanades where to be created prior to the

subdivision of the allotments below 4 hectares.

- 2 Provide advice on the potential for the land development company to claim the land that has accreted.
 - Describe the process that would need to be followed to claim the land including what information would be required to support the claim.

Accretion Process

Accretion occurs where a property is bounded by water, has a moveable boundary, and further land is added to the property due to gradual and imperceptible changes in the position of the water boundary. When this occurs the property owner is entitled to have the title corrected to reflect the current position of the water boundary.

If land is gradually and imperceptibly added to, or eroded from a water boundary of a property, the registered proprietor may apply to the RGL to have their title corrected to show the true position of that boundary. The RGL may issue an amended title under s 80 of the LTA if:

- . (i) the Register-General of Land is satisfied that accretion or erosion has occurred, and
- . (ii) the doctrine of accretion is not excluded.

Information required to support the claim

A cadastral Survey Dataset defining the area being claimed

LINZ Records

- (a) The application should refer to records held by LINZ that show that:
 - (i) the land in question has a moveable water boundary, and
 - (ii) the doctrine of accretion was not excluded at the time of the original grant or conveyance of the land.
- (b) An applicant should consider supplying copies of the records referred to, especially when those records are not available electronically.

Statutory declaration by the applicant

The applicant should provide a statutory declaration setting out the circumstances surrounding the movement in the position of the water boundary. Where relevant, supporting material such as diagrams, illustrative locality plans, photographs and regional council records should accompany the statutory declaration.

Statutory declaration by another person

(a) At least one disinterested person who is familiar with the land applied for should provide a statutory declaration that corroborates the application.

(b) A disinterested person is one who is not employed by or related to the applicant and does not have any vested interest in the outcome of the application.

Expert testimony

If an application is likely to be disputed, a person qualified to give expert testimony about the soil composition of the area claimed as accretion should provide a statutory declaration that corroborates the applicant's statutory declaration.

A land status report for the subject parcel would be beneficial

Giving Notice

A process of giving notice needs to be followed notifying interested parties of the accretion claim. Consideration also needs to be given if the adjoining river is the subject of Treaty of Waitangi settlement negotiations.

- Detail where the parcel boundaries for A and B could follow should the land development company successfully be able to claim the accreted land adjoining these parcels.

Parcel A

Claim up to the current river boundary. To determine the line between Parcel A and V one method is to apportion the river frontage as to remain same prior to accretion claim.

Can claim into Parcel X if true accretion, however Parcel X must have a water boundary.

Parcel B

Accretion cannot be claimed on Parcel B. So without subdivision the boundaries on parcel B remain unchanged

- The land development company would like to work with Council to ~~close~~ stop the paper road for the area immediately adjoining Parcel C and purchase the ~~closed~~ stopped road land from Council. Detail the process associated with this and detail where boundaries would need to follow if they were able to follow this process. The land development company is looking to gain any possible accretion associated with the ~~closing~~ stopping of the road.

Stopping Road

As detailed in Schedule 10 of the Local Government Act. (Process to be listed as per the Schedule)

Potentially could also stop the road under Section 116 of the Public Works Act 1991, however there is a preference that for circumstances like this, the Local Government Act is used.

Need to consider Section 345 (3) of the Local Government Act 1974, which requires a 20 metre wide esplanade reserve to vest, where road is stopped alongside a river over 3 metres in width. Section 345(4) states that any vesting under subsection 3 is subject to any rule include in a district plan, which would provide the opportunity to also provide an esplanade strip.

Area between paper road and river could be claimed as accretion to road, prior to road stopping.

Process of dealing with accretion to road can occur with the process to stop the road. Don't necessarily need to stop all the land that has accreted to road.

- It is possible the land development company may not pursue claiming the accreted land associated with any parcels. Detail how the river boundaries can be dealt with should no accretion claim be followed.

Parcel A

Follows existing water title boundary and this boundary remains a water boundary. See Rule 6.7 (b) of the Rules for Cadastral Survey 2010.

Parcel B

No change as no accretion claim possible. Rule 6.6b of the Cadastral Survey rules require the irregular boundary to be right lined.

Parcel C

Could look to claim the original area of road without the accretion to the road. The area of accreted road ie the area between the current river back would stay as road.

If road stopping in theory may not need to stop the portion of road eroded. If this portion was stopped, then the land would likely transfer to the crown.

- For each possible scenario explain either how esplanade reserves or strips would need to be dealt with.

Overall the premise is that to create an esplanade the allotment needs to adjoin the river Section 230 (4) RMA. Therefore where the allotment does not adjoin the river no esplanade is required. River as defined in RMA differs to a water boundary under the Cadastral Survey rules and in this situation may not follow the same alignment.

Parcel A

Accretion Claimed

20 metre esplanade reserve or strip provided alongside new river boundary.

If accretion is not claimed into Parcel X all the way to the current river boundary, then part of Parcel A would not adjoin a river and esplanades would not be required along the portion not adjoining the river.

Accretion not claimed

No esplanade reserve or strip required as boundary not adjoining a river. Note; Some may argue esplanades are required where accretion is not claimed and the water boundary is within 20 metres of the current river bank.

Current title boundary would remain a water boundary under Cadastral Survey rules. This would mean AMF rights to the Parcel A remain. Could right line the current title boundary and AMF rights would not remain.

Parcel B

No accretion is able to be claimed, so no change either way.

However esplanade reserve or strip would be required where the property adjoins the river and this would include the remaining area of parcel B severed by the river. Section 237A would require the river bed alongside where esplanade reserve is provided, to vest in the territorial authority.

Parcel C

Where paper road is stopped, 20 metre esplanade reserve would have to be provided alongside area of road stopped which is within 20 metres of river bank.

Section 236 of the RMA Act requires topping up of any reserve and subdivision of Parcel C after road stopped would mean part of parcel C would need to be esplanade.