



**KAIPARA
DISTRICT**
PLAN REVIEW

AUGUST 2021



Kaipara District Plan Review
Discussion Document

PUBLIC ACCESS

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BACKGROUND

Access to and along the coast and waterways is very important to many of us. This value is reflected in the Resource Management Act (RMA) and the New Zealand Coastal Policy Statement (NZCPS), which requires councils to recognise and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers as a matter of national importance. Public access to inland areas can provide opportunities to explore and experience the natural environment. Public access in urban environments is usually about ensuring walking and cycling opportunities are provided to allow for connectivity and alternative transport options.

Public Access, which is a form of 'Open Space' can be provided on land owned or controlled by the Council, by Crown Entities, such as the Department of Conservation, as well as on private land. These differing ownerships mean there are different ways in which public access can be provided for and

district planning mechanisms can provide for these various options.

The Kaipara District includes an East and a West Coast, and the Kaipara Harbour, which is New Zealand's largest estuarine harbour. The Te Araroa Trail traverses through the District on the East Coast and the New Zealand Cycle Trail encompasses sections of the West Coast.

Valued walkways in the District are the Brynderwyn hills walk, the Tangihua forest nature walk, the Kai iwi lakes coastal track and Mount Tutamoe track. Kaipara District Council is also planning and developing the Kaihu Valley Trail which will link Donnelly's Crossing with Dargaville, following the old railway corridor.

Often walking and cycling opportunities are part of the roading network in the District, but there are also other trails, including walkways, cycleways, and bridleways (for horse riding) that are not part of the roading network but generally located on public land. In some cases, these are situated within an esplanade reserve, which is a 20 metre wide reserve along a coastline, lake edge or river. District plans can support the creation of new walkways, cycleways and bridleways to ensure new developments, particularly residential subdivisions, are connected to existing public access networks.

Generally there are four ways district plan provisions can ensure more public access. Two are focussed on the coast, lakes and rivers, and two can also provide for inland urban and rural access provisions.

Esplanade Reserves

- 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 of generally 20 metres width.
- Esplanade reserves may be required when land is subdivided, when land is reclaimed, developed, or when a road is stopped under the Local Government Act 1974. They can also be created voluntarily. These areas are classified as reserves under the Reserves Act 1977 once the land is transferred 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 of generally 20 metres width.

- Depending on the circumstances and rules in the relevant district plan, usually in relation to the size of the esplanade reserve to be created as part of a subdivision, compensation must be paid to the land owner by councils as part of that process.

Esplanade Strips

- While for esplanade reserves the ownership of the land transfers to the council, esplanade strips are a legal instrument (similar to an easement) created between a landowner and a territorial authority. They are registered on a property's title, but the land within the strip remains in the ownership of the landowner and does not need to be formally surveyed.
- Esplanade strips may be required by a rule in a district plan when land is subdivided, reclaimed, developed or when a road is stopped. An esplanade strip may also be created voluntarily at any time by agreement.
- Unlike esplanade reserves, the width of an esplanade strip remains unchanged within the same allotment. For example, if a riverbank erodes by 2 metres, the width of the esplanade strip then extends beyond its old boundary by 2 metres to offset the lost ground.
- Councils may negotiate with a landowner to provide a public esplanade strip where there is a significant benefit for the community.
- As for esplanade reserves, in certain circumstances, compensation must be paid to the land owner to create an esplanade strip.

Access Strips

- Access strips use an easement as the legal mechanism to enable public access, both to or along water bodies or inland public land. The easement can be established at any time by agreement between the landowner and the territorial authority. Equally, access strips may be cancelled at any time by agreement between the landowner and the territorial authority.
- Access strips are surveyed and fixed, but their ownership remains with the landowner.

- There is no legal requirement to pay compensation to the landowner when an access strip is created. However, because it is a voluntary agreement, compensation could be payable.



Landlocked land

Landlocked land is a piece of land to which there is not reasonable physical access by road, esplanade reserve, esplanade strip, access strip or marginal strip. District plan provisions can promote access to these landholdings where there is an opportunity, generally through subdivision provisions.

To be able to fully understand the public access network within the District, the following two elements of public access have been included for completeness. However as these are both controlled through different legislative provisions, there are no district planning mechanisms that can be considered to add to the public access network through these.

KEY ISSUES

Priority Esplanade Areas

- The Operative District Plan maps do not indicate where Council would like to create new esplanade reserves and strips. This is incurring missed opportunities both at the time of developments/subdivision and when other opportunities present themselves to enhance public access to our along our coast and waterways.
- The Operative District Plan does not include incentives to encourage property owners to set aside esplanade reserves or strips in situations where subdivision will not occur, due to the property not being eligible for additional subdivision development.

Identification of additional walking, cycling and bridleway networks

- There are no provisions in the Operative District Plan showing the desired location of future walking, cycling and bridleway networks, with connections to existing transportation networks. This planning is particularly important in the residential and business zones to ensure people can easily walk and cycle in neighbourhoods and commercial areas and which will support the transition to alternative transport options.

Other types of public access

To be able to fully understand the public access network within the District, the following two elements of public access have been included for completeness. However as these are both controlled through different legislative provisions, there are no district planning mechanisms that can be considered to add to the public access network through these.

Paper Roads (Unformed Legal Roads)

Paper roads are more precisely called 'unformed legal roads' and have the same legal status as any other legal road, meaning they provide public access. Very often these are located on farmland. While paper roads may be marked on survey plans, generally they are difficult to identify on the ground because they are not formed. While councils are responsible for paper roads, they are not legally obliged to form, repair or maintain paper roads.

Marginal strips

Marginal strips are strips of land adjoining the coast, lakes larger than eight hectares in area, and rivers greater than three metres in width which are administered by the Department of Conservation (DOC). The Kaipara District has several marginal strips, which often adjoin road reserves or paper roads, providing public access to many remote areas of the District.

Marginal strips are created under Part 4A of the Conservation Act 1987 and are deemed to be created automatically when Crown land is sold or transferred to another party. This includes many new properties created between April 1990 (when the relevant provisions came into force) and June 2007. Confirming the location of the marginal strips allows Council to develop a full picture of all public access provisions in the District which would support the development of appropriate provisions to create desirable public access networks across the entire District.

IWI INTERESTS AND IWI MANAGEMENT PLANS

Public access is a key topic of interest to iwi given that many Māori landholdings adjoin the coastline, rivers and lakes. Consideration needs to be given to the cultural values of these areas.

Two Iwi Management Plans are relevant to the Kaipara District.

- Te Roroa Iwi Environmental Policy 2009
- Te Uri o Hau Kaitiakitanga o Te Taiao 2011

Both of these plans only touch lightly on the topic of public access. The primary focus of these plans is to manage and mitigate the adverse effects of subdivision and development in the coastal environment and along the margins of rivers and lakes.

SUMMARY OF THE OPERATIVE DISTRICT PLAN PROVISIONS

The current provisions in chapters 4, 12, 13, 14 and 20 of the Operative District Plan are relevant to the public access topic. Further details on these provisions can be found in Appendix 1.

NEXT STEPS

Council has engaged technical experts to assist with the identification of all Open Spaces, including public access, across the District. This work will assist to identify where priority esplanade areas, and which key walking, cycling and bridleway linkages need to be included in the new District Plan.

THINGS TO THINK ABOUT

The content of a district plan ranges from fulfilling legal requirements made by Central Government and regional councils to proposing specific provisions that meet the needs of our District and its communities. This list includes any changes required to meet legal obligations as well as some ideas Council wants to explore further with our communities.

- Identification of potential priority areas for future esplanade reserves and strips, which may be included on the new District Plan maps.
- In the development of the new District Plan, a review of subdivision provisions related to the creation of esplanade reserves and strips will need to be undertaken.
- Identification of future walking and cycling transportation linkages in the various zones may be included on the new District Plan maps. This may ensure these linkages are created if subdivision occurs.



APPENDIX 1

RELEVANT LEGISLATION AND NATIONAL DIRECTION

Resource Management Act 1991	
Section 6(a)	Seeks to preserve the natural character of the coastal environment (including the coastal marine area), wetlands, lakes and rivers, and their margins, and the protection of them from inappropriate subdivision use and development.
Section 6(d)	Requires maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.
Sections 229–237H	Apply directly to esplanade reserves and esplanade strips.
Sections 238 and 239	Apply to vesting of roads and reserves, which provide public access.
Sections 230 and 231	Determine what land can be vested as esplanade reserves or esplanade strips when subdivision occurs, and where these requirements can be waived.
Section 230(3)	Outlines the situations in which an esplanade reserve needs to be 20 metres wide.
New Zealand Coastal Policy Statement	
Policy 18	Recognises the need for public open space within and adjacent to the coastal marine area, including the important role of esplanade reserves and strips in meeting the need for public open space.
Policy 19(2)(c)	States that opportunities to enhance or restore public walking access should be identified where: <ul style="list-style-type: none"> • connections between existing public areas can be provided; or • improving access would promote outdoor recreation; or • physical access for people with disabilities is desirable; or • the long-term availability of public access is threatened by erosion or sea level rise; or • access to areas or sites of historic or cultural significance is important; or • subdivision, use, or development of land adjacent to the coastal marine area has reduced public access, or has the potential to do so.

REGIONAL GUIDANCE

Regional Policy Statement for Northland	
Policy 5.1.2	Development in the coastal environment

OPERATIVE KAIPARA DISTRICT PLAN 2013 - RELEVANT PROVISIONS

Chapter 12 – Rural	<p>Policy 12.6.20 requires the establishment of Esplanade Reserves and Strips when land is subdivided into lots less than 4ha.</p> <p>Policy 12.6.21 facilitates the provision of public access to existing Esplanade Reserves and Strips in the District which are currently land locked or isolated from other public access areas.</p> <p>Rule 12.15.9 Esplanade Management for lots less than 4ha is a discretionary activity. Where an allotment of less than 4ha is created on subdivision of land which adjoins the sea, rivers over 3m in width or lakes over 8ha in area, an esplanade reserve or strip of 20m in width shall be set aside.</p>
Chapter 13 – Residential	<p>Issue 13.4.3 Land use and development has the potential to restrict public access to and along the coast, lakes and rivers.</p> <p>Issue 13.4.5 Lack of linkages (e.g. pedestrian, vehicular, open space) between residential areas has the potential to adversely impact on the amenity, health and wellbeing of communities.</p> <p>Policy 13.6.5 Subdivision adjoining the coast, rivers and lakes is generally only acceptable when it maintains or enhances public access (by the vesting of public access roads, reserves and pedestrian access ways and access strips) and esplanade reserves and/or strips.</p>
Chapter 14 – Business Commercial and Industrial	<p>Policy 14.6.11 By requiring the establishment of esplanade reserves and strips when land is subdivided in the Residential and Business Zones of the District.</p> <p>Policy 14.6.12 By facilitating the provision of public access to existing esplanade reserves and strips in the District which are currently land locked or isolated from other public access areas.</p>
Chapter 20 – Reserve Management Units (RMUs)	<p>Identifies Reserves and Open Spaces, which also includes public access.</p> <p>Objective 20.5.2 Where appropriate, to establish reserve management linkages that provide physical connections between ecosystems, in order to enhance biodiversity and recreational opportunities.</p>



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