

Planning Report

Plan Change 33 – Wairoa River Esplanades

1.0 Introduction

- 1.1 The purpose of this report is to provide recommendations on submissions and further submissions to Plan Change 33 – Wairoa River Esplanades.
- 1.2 Plan Change 33 seeks to complete a link of existing and proposed esplanade reserves and strips along the entire length of the Wairoa River from the Tauranga Harbour to McLaren Falls. This is further explained in 2.1 below.
- 1.3 For a full background to the Plan Change and the proposed provisions please refer to the Section 32 Report. For a list of the proposed provisions only, please refer to the document titled 'Summary of Recommendations – All Section 32 Reports'.
- 1.4 Any recommended amendments to rules in this report will be shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this Planning Report in blue.

2.1 Topic 1: Proposed Esplanade Reserves and Strips on Planning Maps H05 and H06 and in Appendix 4.

2.1 Background

The proposed additions are best illustrated in **Attachment A** where these are shown as red. The proposed changes to District Plan Maps H05 and H06 are shown in **Attachment B**. The proposed changes to Appendix 4 "Proposed Esplanade Strips and Reserves" are shown below. To assist with the understanding of this report, Section 12A "Proposed Esplanade Reserves, Esplanade Strips and Access Strips" is provided as **Attachment C**.

Appendix 4 - Proposed Esplanade Reserves/Strips

1. An esplanade strip of 10m in width or 20m in width where topography dictates a wider strip is necessary to provide public access shall be set aside along the rivers and streams identified in the District Plan namely:
 - (xvii) The true left bank of the Wairoa River from Wairoa Road to Ohourere Stream approximately 500m upstream of the Kaimai Canoe Club site (which is on the reserve at Lot 1 DPS 29327) to where a suitable river crossing may be formed above potential flood waters.

3. An esplanade reserve 20m in width (or lesser width if there are special circumstances, e.g. buildings within 20m of the foreshore) shall be set aside in the locations identified in the Planning Maps ~~along the Harbour foreshore~~ in particular:

(iv) along the true right bank of the Wairoa River from Omanawa Road to, but not including, the Ruahihi Power Station on State Highway 29.

The Section 32 Report relating to the Plan Change explained the requirement for additional proposed esplanade reserves and strips as follows;

"Esplanade reserves and strips preserve the natural character of and public access to and along the coast, lakes and rivers. The Wairoa River is one of the District's most significant rivers and is highly valued and used by the community because of its natural and recreational qualities. It is therefore important to protect these natural qualities and to allow for future public access, especially given the extra demand that will be created by an increasing population.

The completion of this link was intended to have been achieved under the District Plan Review but was only partially achieved due to an error of omission. The land that is still required to complete this link is from approximately 200m south of Redwood Lane to approximately 600m south of the State Highway 29 bridge on the true left bank (west of river) and from approximately 800m south of Redwood Lane to approximately 600m north of the Ruahihi Power Station on the true right bank (east of river)."

2.2 Submission Points

One submission point was in support of the Plan Change. Five submission points were in opposition. One further submission was in opposition.

The main submission points made by submitters are as follows:

2.2.1 The Regional Council supported the Plan Change as it recognises and provides for the following matters of national importance under the RMA;

- d) the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.
- e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

The Regional Council also supported the Plan Change because it will give effect to Objective 22 of the Proposed Regional Policy Statement - "The coastal marine area, lakes and rivers are generally accessible to the public".

2.2.2 Trevor and Janet Collins opposed the Plan Change for the following reasons:

- The proximity of their dwelling to the proposed esplanade reserve/strip.
- Concerns of having to pay for infrastructure.
- Rubbish.
- Intrusion and invasion of privacy.
- Flooding and the rapid rise in the water level.
- They suggest using an existing access to a waterhole on Poripori Road (which is on road reserve) then along a grass berm on Poripori Road to approximately 100m south of the State Highway 29 bridge where a now overgrown track continues under the bridge.

2.2.3 James Carson opposed the Plan Change. He wished for their property to remain as it is.

2.2.4 Maxine Graham and Robin Hanvey opposed the Plan Change for a number of reasons including:

- Constraints on their export avocado orchard, for instance the shooting of pest animals and spraying.
- Concerns about the accumulation of rubbish.
- Concerns relating to theft.
- They have already had problems with the public assuming it is ok to wander over their property.
- The residents with properties adjoining the Wairoa River in their part of the river system objected to the Kaimai Reserves Management Plan in 2003 and this position has not altered.
- A consultant did a feasibility study at that same time and determined it was not feasible physically or financially.
- They have no wish to subdivide.
- They are opposed to a bridge being put across from the eastern side (true right) and have already witnessed the Kaimai Canoe Club bridge being ripped away in the floods of January 2012.
- General flooding issues.
- There are steep cliffs, drop-offs and falling trees which will prevent establishment and use of a safe walkway.
- The western bank (true left) of the river has no esplanade reserves/strips after Redwood Lane other than at the Kaimai Canoe Club. As the Canoe is the final piece in the link, they contest the motive for going beyond that final link.
- Council already has esplanade reserves on the eastern side (true right) of the river from the Ruahihi Power Station to the Trustpower land near McLaren falls and they ask why these have not been developed.

2.2.5 Mossops Honey opposed the Plan Change for a number of reasons as follows (note: they were not directly affected by the Plan Change):

- The public do not generally respect other people's property.
- There is little or no benefit to landowners.
- They object to compulsory confiscation of private land.
- Some properties are not much more than 20m in width.
- The river has changed over the years but the changes have not been recorded on maps so the proposed esplanade reserves would go through buildings.
- The river is prone to flooding meaning tracks would require constant monitoring, maintenance and repair.
- The cost to develop and maintain esplanades would be costly with the benefits to the public minimal.
- A link all the way to McLaren Falls is unnecessary.

2.2.6 Federated Farmers acknowledged that the RMA allows the obtaining of esplanade reserves/strips, but opposed the Plan Change for the following reasons;

- Where a proposed esplanade is mapped the public may think access is already available.
- Even when public access is legally provided this has negative impacts on landowners e.g. rubbish, pest and weed spread.
- Can reduce confidence to continue farming operations.
- Compensation should be payable, however councils often do not have the resources to keep up with compensation.
- On-going maintenance can be a challenge for councils too.
- Many of the properties are too small to subdivide.
- Some properties qualify for a waiver under Rule 12A.3.1 (f) if they have buildings within the 20m area or if the subdivision is a boundary adjustment.

2.2.7 A further submission was made by Maxine Graham and Robin Hanvey opposing the submission by the Regional Council and supporting all those submitters who opposed the Plan Change.

2.3 Site Visits

Council staff re-visited the properties of the directly affected landowners who made submissions (Collins, Carson, and Graham and Hanvey). The main purpose of the site visits was to determine whether an esplanade reserve/strip was able to be established on these properties on the western side (true left) of the river. Observations are included amongst the feedback to submission points in 2.4 below.

2.4 Feedback to Submission Points

The purpose of this part of the report is to provide feedback and further context to the issues raised in submission points, as well as observations from the site visits, to assist in the weighing up of the options to follow.

Trevor and Janet Collins

- The dwelling is approximately 10m from the property boundary at its closest point and 15m at its furthest.
- If an esplanade reserve/strip is obtained by Council, then Council is responsible for paying for infrastructure, not the landowners.
- Due to the proximity of the dwelling to the property boundary, intrusion and lack of privacy are genuine concerns; especially given the only possible access is a narrow strip right along the property boundary.
- Regarding rubbish accumulation, see 2.5 below.
- There is evidence of flooding where the possible access is.
- The public can access a waterhole on Poripori road via Council road reserve (immediately west of the Collins property).
- There is potential for walkway access under the State Highway 29 bridge but it would be difficult to continue that past the Collins property as there is little space between their property boundary and the river. It would be more practical to continue along Poripori Road past the Collins' road frontage to the road reserve providing access to the waterhole. The Collins' also point out that it may be possible to construct a bridge from this waterhole across to the eastern side (true right) of the river, as there are rocks which they have never seen under water during floods.

James Carson

- The dwelling is approximately 15m from the property boundary.
- There is space for access along the river bank and along rocks.
- This access can link to the adjoining properties.
- There is evidence of flooding along this access.

Maxine Graham and Robin Hanvey

- Regarding issues such as rubbish accumulation and theft, see 2.5 below.
- Worn established tracks show that the public already access the river through the Kaimai Canoe Club entrance and wander onto the rocks at the bottom of the bank. This is to access a waterhole and trout fishing spots on the river. The submitter says that in summer the spot attracts up to 100 visitors a day, which they say they have no problem with provided it does not interfere with their use of their property and visitors acknowledge that it is private property and follow instructions to leave e.g. if they are spraying.
- The worn established tracks show that the public already access this property regardless of whether it is shown on the maps as proposed esplanade reserve/strip or not. The landowners are concerned that showing the proposed esplanade reserve/strip on the maps gives visitors the impression it is public land.
- It is also worth noting that there is a physical separation (step cliff) between the river access and the orchard, therefore the

orchard activity is quite separate from the recreation activity associated with the river environment.

- The feasibility study adopted by Council in 2003 related to establishing a formed walkway and identified a number of opportunities, constraints and possible options associated with this. It did not rule out the possibility altogether. The purpose of an esplanade/reserve strip is to give legal right of public access; it does not necessarily mean a walkway will be established.
- While landowners (in general) may not wish to subdivide, and in many cases cannot subdivide, proposed esplanade reserves/strips can also be obtained during a boundary adjustment process. If a subdivision or boundary adjustment occurs before Council identifies a proposed esplanade reserve/strip, then the opportunity to propose and obtain an esplanade reserve/strip in the future may be lost.
- There is evidence that the Kaimai Canoe Club Bridge was washed away in floods (it was bolted to rocks).
- General flooding issues are apparent. The public would not be present during flood events.
- There are steep cliffs and drop-offs which may make the establishment and use of a formed walkway difficult in some parts. This has the effect of limiting access to those people more able to traverse the terrain.
- This property is, as the submitter points out, the last property in the "link" on the western side (true left) of the river until two non-adjointing (600m apart) WBOPDC reserves approximately 700m and 1400m south of their property respectively. The reason why the "link" on the western side ends here is because of an intention that a bridge would eventually go across to the other side of the river at this point. That aside, there is a desire to access this point as evidenced by the current tracks in place (as noted by reserves staff upon a previous site visit).
- The establishment of the "Wairoa River Local Purpose and Recreation Reserves" is provided for in the Kaimai Reserve Management Plan (pages 146 and 147). There is a policy focus on "continuing to secure remaining areas of esplanade reserve along the Wairoa River (as identified in the District Plan and Feasibility Study) to achieve continuous pedestrian access and riparian margin protection". There is also a focus on investigating the possibility of walkways.

Mossops Honey

- Regarding the impacts of public access, see 2.5 below.
- The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers is a matter of national importance under the RMA which Council must give effect to. It is for the benefit of the public not the private landowner, however compensation may be payable in some circumstances.
- It is acknowledged that some properties are not much more than 20m in width (these are lower down the river towards the Redwood Lane end).

- It is acknowledged that some of the proposed esplanade reserves/strips “go through buildings” however a width less than 20m may be obtained in these instances.
- While the river is prone to flooding presenting a challenge for establishing walkways, these are not necessarily going to be established. Often, the type of walkway is simply a worn desire line established by regular use. The purpose of an esplanade is to allow rights of access to the public.
- The costs of identifying and maintaining walkways may be minimal for this reason.
- The Kaimai Reserve Management Plan and Wairoa River Valley Strategy both recognise the importance of achieving a link of public access from Tauranga Harbour to McLaren Falls (“mountain to the sea” concept). Both of these documents involved public consultation.

Federated Farmers of New Zealand

- The public already access private property regardless of whether proposed esplanade reserves/strips are shown on the maps.
- Regarding rubbish, pest and weed spread, see 2.5 below.
- Council funds compensation for the obtaining of land and the establishment of reserves from the recreation and leisure financial contribution paid by developers. There are also instances where compensation is not applicable. Maintenance costs are minimal and are funded by rates.
- While many of the properties are too small to subdivide, the proposed esplanade reserves/strips can also be obtained during a boundary adjustment process. If a subdivision or boundary adjustment occurs before Council identifies a proposed esplanade reserve/strip, then the opportunity to propose and obtain an esplanade in the future may be lost.
- The waiver for buildings within the 20m area only applies if an esplanade reserve/strip of a smaller width cannot be established. Note: it is the flood level that often determines the setback of the houses.
- Waivers for boundary adjustments may not always be applied, especially if these present the only opportunity to obtain a proposed esplanade reserve/strip.

2.5 Other relevant considerations

Other relevant considerations as noted in the Section 32 Report are;

- *Many of the above (landowner) concerns will not be realised unless landowners are eligible to and intend to subdivide or intend to boundary adjust.*
- *Even if they do, Council will not necessarily acquire 20m of land depending on the specific circumstances (see Rule 12A.3.1 (f)).*
- *It may also be some time before an esplanade is actually established.*

- *Council can establish esplanade reserves and strips in a way to minimise effects on landowners e.g. litter bins, fencing, signs, formed tracks, maintenance and regular inspections.*
- *In the case of esplanade strips, these can also restrict public access during certain times or under certain conditions.*
- *Where topography, erosion or flood risk is an issue, the construction of formed access may not be appropriate and other options will be considered e.g. marker poles or cat's eyes on rocks.*
- *Some members of the public already access the river regardless of there being esplanades or not.*
- *Allowing formal public access may actually reduce the likelihood of other concerns being realised such as theft of and damage to property as increased surveillance is likely to discourage offenders.*

Further considerations include;

- Having an esplanade reserve/strip in place allows for Council's bylaws to be applicable and therefore available as a tool for managing potential impacts.
- An esplanade strip has recently been obtained on the Jenson properties from a boundary adjustment - see **Attachment A**.
- An esplanade reserve or strip has also been obtained by consent notice on the property opposite and upstream of the Graham and Hanvey property – shown as purple in **Attachment A**.
- Under Rule 12A.3.1 (b), Council already has the ability to obtain esplanade reserves/strips to provide access to features such as swimming holes, waterfalls, picnic sites, known fishing areas and to link with existing legal public access such as formed and unformed roads and existing esplanade reserve/strips. See **Attachment C**. Such areas do not need to be shown on the Planning Maps.
- While the subdivision rules are currently restrictive, they may change in the future for instance through a Plan Change to allow protection lots for the obtaining of an esplanade reserve/strip. This is an option that was considered by Council staff during the preparation of Plan Change 33 however it was felt that such a change, if approved by Council, should be investigated on a District-wide basis to fully determine the implications. The same option was put forward by the Graham and Hanvey submission and responded to in this manner in the Planning Report for Plan Change 39 – Protection Lot Rule.

2.6 Option 1 – As Proposed – Identify the land shown in red in Attachment A as “Proposed Esplanade Reserves/Strips” on the Planning Maps and in Appendix 4.

Advantages	<ul style="list-style-type: none"> ▪ Corrects an error of omission that occurred through the District Plan Review. ▪ Allows Council to obtain esplanade reserves or strips when landowners subdivide (if eligible now or in the
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	<p>future) or boundary adjust in order to provide public access to the river at particular points or as a part of a wider network of public access; in this case from the Tauranga Harbour to McLaren Falls. If such an opportunity is missed it may not arise again. Note: Rule 12A.3.1 (b) allows the obtaining of esplanade reserves/strips in some instances where these are not shown on the maps.</p>
Disadvantages	<ul style="list-style-type: none"> ▪ Submitters have raised a number of concerns and potential issues relating to; <ul style="list-style-type: none"> - impacts on landowners, - feasibility (particularly relating to forming walkways and implementation under the current subdivision regime), - the necessity of the additional esplanade reserves/strips (including alternative options). ▪ Inclusion of the Collins property is not necessary given the more practical option of providing access along their road frontage at Poripori Road to the road reserve to access the waterhole.

2.7 Option 2 – Status Quo i.e. withdraw the Plan Change.

Advantages	<ul style="list-style-type: none"> ▪ Recognises the concerns of landowners relating to potential impacts.
Disadvantages	<ul style="list-style-type: none"> ▪ Fails to correct an error of omission that occurred through the District Plan Review. ▪ Council will not be able to obtain esplanade reserves or strips when landowners subdivide (if eligible now or in the future) or boundary adjust in order to provide public access to the river at that point or as a part of a wider network of public access; in this case from the Tauranga Harbour to McLaren Falls. If such an opportunity is missed it may not arise again. Note: Rule 12A.3.1 (b) allows the obtaining of esplanade reserves/strips in some instances where these are not shown on the maps.

2.8 Option 3 – Identify the land shown in red in Attachment A as “Proposed Esplanade Reserves/Strips” on the Planning Maps and in Appendix 4, except the Collins, Carson, and Graham and Hanvey properties.

Advantages	<ul style="list-style-type: none"> ▪ Partly corrects an error of omission that occurred through the District Plan Review by including some of the properties omitted. ▪ Allows Council to obtain esplanade reserves or strips when landowners subdivide (if eligible now or in the future) or boundary adjust in order to provide public access to the river at particular points or as a part of a wider network of public access; in this case a full
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	<p>link along the eastern side (true right) of the Wairoa River from the Tauranga Harbour to McLaren Falls.</p> <ul style="list-style-type: none"> ▪ For the three directly affected landowners who made submissions, it avoids the identification of proposed esplanade reserves/strips on their properties. ▪ While proposed esplanade reserves/strips would not be shown on the maps on these properties, it may not result in a loss of opportunity to establish a link on the western side (true left) i.e. the Collins property is not required due to an alternative access option, an esplanade reserve/strip on the Graham and Harvey property is already able to be obtained through Rule 12A.3.1 (b) because of the waterhole and fishing spots, and an esplanade reserve/strip on the Carson's property can also be obtained under Rule 12A.3.1 (b) if needed in the future as a link to the existing reserve at the Kaimai Canoe Club.
Disadvantages	<ul style="list-style-type: none"> ▪ For those properties not exempted under this option, submitters have raised a number of concerns and potential issues relating to; <ul style="list-style-type: none"> - impacts on landowners, - feasibility (particularly relating to forming walkways and implementation under the current subdivision regime), - the necessity of the additional esplanade reserves/strips (including alternative options).

2.9 Discussion

Section 6 (d) of the RMA requires that councils 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. To achieve this, the RMA allows councils under Section 77 to include district plan rules which provide for the obtaining of esplanade reserves/strips where these are required in respect of this purpose and other purposes of esplanade reserves/strips. Objective 22 of the Proposed Bay of Plenty Regional Policy Statement also provides that "The coastal marine area, lakes and rivers are generally accessible to the public". Council must give effect to this.

In recognition of the Wairoa River being one of the District's most significant natural, recreational and cultural water resources, Plan Change 33 seeks to complete a link of existing and proposed esplanade reserves and strips along the Wairoa River from the Tauranga Harbour to McLaren Falls. To achieve this, it was proposed to show those missing links on the Planning Maps and in Appendix 4 that had been unintentionally omitted at the time of notifying the District Plan Review.

Submitters raised a number of concerns relating to impacts on landowners and as a result challenged the feasibility of, and the need for, the Plan Change. Feedback and further context has been given on these

points. The main arguments against the Plan Change are presented and discussed below.

Impacts on landowners

Potential impacts on landowners are acknowledged. It is noted too that landowners are already experiencing many of these impacts due to existing public demand and access. One of the main concerns for landowners may therefore be the showing of lines on maps and any associated increase in effects or loss of control as landowner. As discussed under part 2.5 of this report, the establishment of public access is a long term vision and there are many ways that potential impacts can be managed if or when esplanade reserves/strips are obtained. It is a long term vision because it may be some time before all the required land is obtained, not because of a lack of intent or planning. Landowners may also choose to sell and move on and any new landowners may have different plans. Therefore, any arguments that the showing of lines on maps is premature are not justified.

Council cannot implement the Plan Change under the current District Plan (subdivision rules and waivers provided in Section 12A).

Esplanade reserves/strips can be obtained through boundary adjustments as well as subdivision and these are a fairly common occurrence in the District. Waivers can be applied for when buildings are within the proposed esplanade reserve/strip, however Council has the option of obtaining a lesser width to provide for public access unless it will cause undue hardship. In instances where a boundary adjustment presents the only opportunity to obtain an esplanade reserve/strip then a waiver may not be applied either. In summary, the current District Plan rule framework does allow Plan Change 33 to be implemented.

Walkways and bridges are impractical because of flooding, topography and costs.

Council staff are aware of the difficulties associated with establishing and maintaining walkways and bridges due to the above factors and can consider options other than a formed walkway. The key purpose of this Plan Change is to create the opportunity to obtain land to provide public access, not to construct walkways necessarily.

Council may not have the resources to compensate for, establish, and maintain reserves.

As mentioned earlier in this report, Council funds compensation for the obtaining of land and the establishment of reserves from the recreation and leisure financial contribution paid by developers. There are also instances where compensation is not applicable. Maintenance costs are minimal and are funded by rates.

The Plan Change or inclusion of particular properties is not needed.

The main arguments of this type were that:

- There are existing esplanade reserves on the eastern side (true right) of river that have not yet been established.
- The Collins property is not needed because of the alternative option of using the Poripori Road frontage to link from the State Highway 29 Bridge to the Council road reserve/waterhole.
- The Graham and Hanvey property is not a "link" but rather is an extension as the Kaimai Canoe Club is the final part of the access on the western side (true left) of the river.

The establishment of the "Wairoa River Local Purpose and Recreation Reserves" is provided for in the Kaimai Reserve Management Plan (pages 146 and 147). There is a policy focus on "continuing to secure remaining areas of esplanade reserve along the Wairoa River (as identified in the District Plan and Feasibility Study) to achieve continuous pedestrian access and riparian margin protection". There is also a focus on investigating the possibility of walkways. Council has recently obtained esplanade reserves or strips on a number of properties on the eastern side (true right) of the river as discussed earlier, so is making progress.

The Collins submission highlighted a more practical alternative option to proposing esplanade reserves/strips on their property and it is recommended that their property is removed. The Graham and Hanvey property was included as part of a "link" because of the possibility of constructing a bridge from the western side (true right) of the river. However, due to the landowners concerns about showing lines on maps, it is recommended that doing so is not essential given Rule 12A.1.3.1, even if lines on the map would be the preferred option from a Council staff point of view. The same can therefore apply to the Carson's property as well.

2.10 Recommendation

That the Plan Change is retained as notified except that the properties of Janet and Trevor Collins, James Carson, and Maxine Graham and Robin Hanvey are **not** shown as proposed esplanade reserves/strips on the Planning Maps or in Appendix 4 "Proposed Esplanade Strips/Reserves".

That Planning Map H06 is retained as notified and Planning Map H05 is amended to reflect the above as shown in **Attachment D**.

That Appendix 4 is amended to reflect this as shown below.

Appendix 4 - Proposed Esplanade Reserves/Strips

1. An esplanade strip of 10m in width or 20m in width where topography dictates a wider strip is necessary to provide public access shall be set aside along the rivers and streams identified in the District Plan namely:

- (xvii) ~~The true left bank of the Wairoa River from Wairoa Road to Ohourere Stream approximately 250m downstream of the State Highway 29 Bridge at Poripori Road. 500m upstream of the Kaimai Canoe Club site (which is on the reserve at Lot 1 DPS 29327) to where a suitable river crossing may be formed above potential flood waters.~~
3. An esplanade reserve 20m in width (or lesser width if there are special circumstance, e.g. buildings within 20m of the foreshore) shall be set aside in the locations identified in the Planning Maps ~~along the Harbour foreshore~~ in particular:
- (iv) along the true right bank of the Wairoa River from Omanawa Road to, but not including, the Ruahihi Power Station on State Highway 29.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
23	1	Carson, James
13	1	Collins, Trevor and Janet
25	1	Graham (Maxine) and Hanvey (Robin)

Accepted in Part

Submission	Point Number	Name
15	1	Bay of Plenty Regional Council
21	3	Federated Farmers of New Zealand
FS43	1, 2, 3, 4, 5	Graham and Hanvey
18	1	Mossops Honey

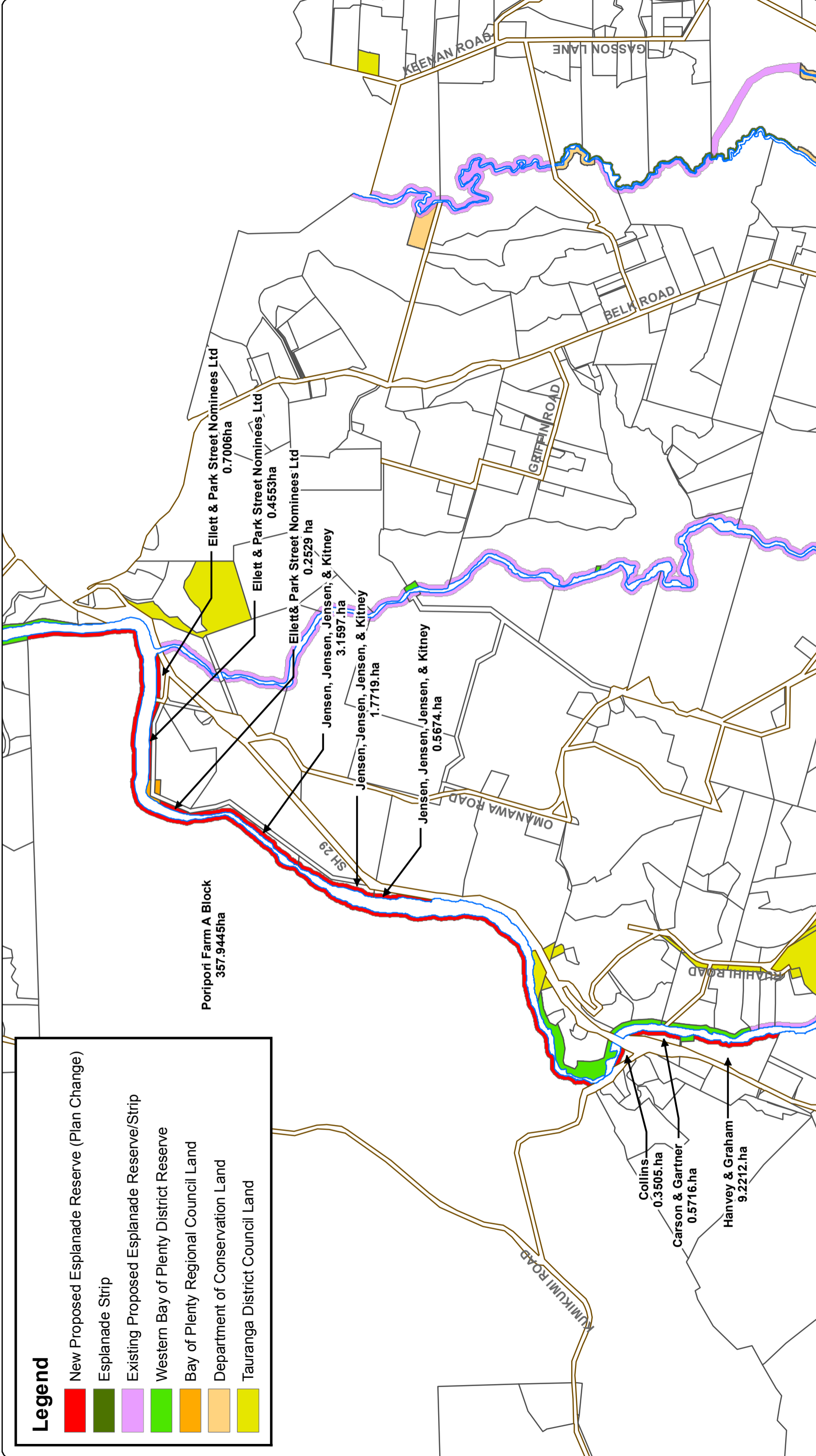
2.11 Reason

- 2.11.1** Section 6 (d) of the RMA requires that councils 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. Objective 22 of the Proposed Bay of Plenty Regional Policy Statement also provides that “The coastal marine area, lakes and rivers are generally accessible to the public”. Council must give effect to this.
- 2.11.2** The Wairoa River is one of the District’s most significant natural, recreational and cultural water resources. Completing a link of existing and proposed esplanade reserves and strips along the Wairoa River from the Tauranga Harbour to McLaren Falls is therefore important.
- 2.11.3** Potential impacts on landowners are acknowledged. It is noted too that landowners are already experiencing many of these impacts due to existing public demand and access. The establishment of public access is a long term vision and there are many ways that potential impacts can be managed if or

when esplanade reserves/strips are obtained. It is a long term vision because it may be some time before all the required land is obtained, not because of a lack of intent or planning. Landowners may also choose to sell and move on and any new landowners may have different plans. Therefore, any arguments that the showing of lines on maps is premature are not justified.

- 2.11.4** Plan Change 33 can be implemented under the current District Plan. Esplanade reserves/strips can be obtained through boundary adjustments as well as subdivision and these are a fairly common occurrence in the District. Waivers can be applied for when buildings are within the proposed esplanade reserve/strip, however Council has the option of obtaining a lesser width to provide for public access unless it will cause undue hardship. In instances where a boundary adjustment presents the only opportunity to obtain an esplanade reserve/strip then a waiver may not be applied.
- 2.11.5** Council staff are aware of the difficulties associated with establishing and maintaining walkways and bridges due to flooding, topography and costs and can consider options other than a formed walkway. The key purpose of this Plan Change is to create the opportunity to obtain land to provide public access.
- 2.11.6** Council does have the resources to establish and maintain reserves. Council funds compensation for the obtaining of land and the establishment of reserves from the recreation and leisure financial contribution paid by developers. Maintenance costs are minimal and are funded by rates.
- 2.11.7** The Collins submission highlighted a more practical alternative option to proposing esplanade reserves/strips on their property.
- 2.11.8** Graham and Hanvey are concerned about the possible impacts of showing a proposed esplanade reserve/strip on their property. It does not necessarily need to be shown as Rule 12A.1.3.1 allows the obtaining of an esplanade reserve/strip at the time of subdivision/boundary adjustment to provide access to certain features, in this case a waterhole and fishing spots.
- 2.11.9** The Carson submission was also in opposition to showing a proposed esplanade reserve/strip on their property. It does not necessarily need to be shown either as Rule 12A.1.3.1 allows the obtaining of an esplanade reserve/strip at the time of subdivision/boundary adjustment to provide access to existing public access such as a formed or unformed road or reserves, in this case the existing esplanade reserve/strip at the Kaimai Canoe Club.

Attachments A, B, C and D follow:



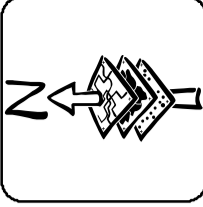
Legend

- New Proposed Esplanade Reserve (Plan Change)
- Esplanade Strip
- Existing Proposed Esplanade Reserve/Strip
- Western Bay of Plenty District Reserve
- Bay of Plenty Regional Council Land
- Department of Conservation Land
- Tauranga District Council Land

Scale A3 - 1:17,500
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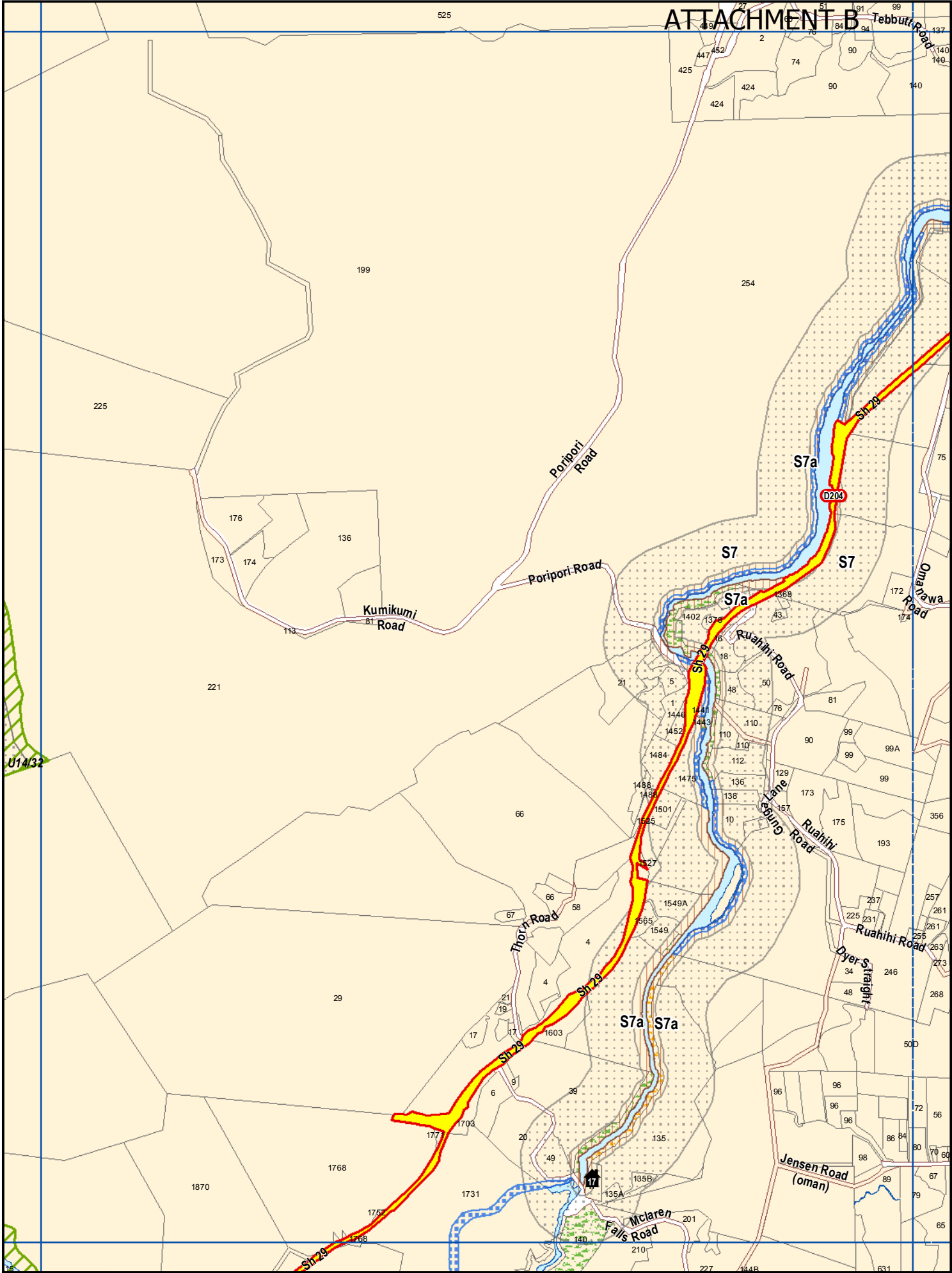
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 Location of services is indicative only. Council accepts no liability for any error.
 Archaeological data supplied by NZ Archaeological Assoc./Dept. of Conservation.

Email: gis@westernbay.govt.nz
 Date: 28/11/2012
 Operator: mlb
 Map: E:\Shape\MLB\Map\Wairoa River Esplanades Plan Change.mxd

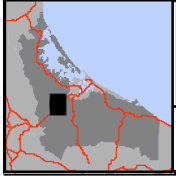


**WAIROA RIVER ESPLANADES PLAN CHANGE
 MAP OF PROPOSED AND EXISTING RESERVES
 AND AFFECTED OWNERS**





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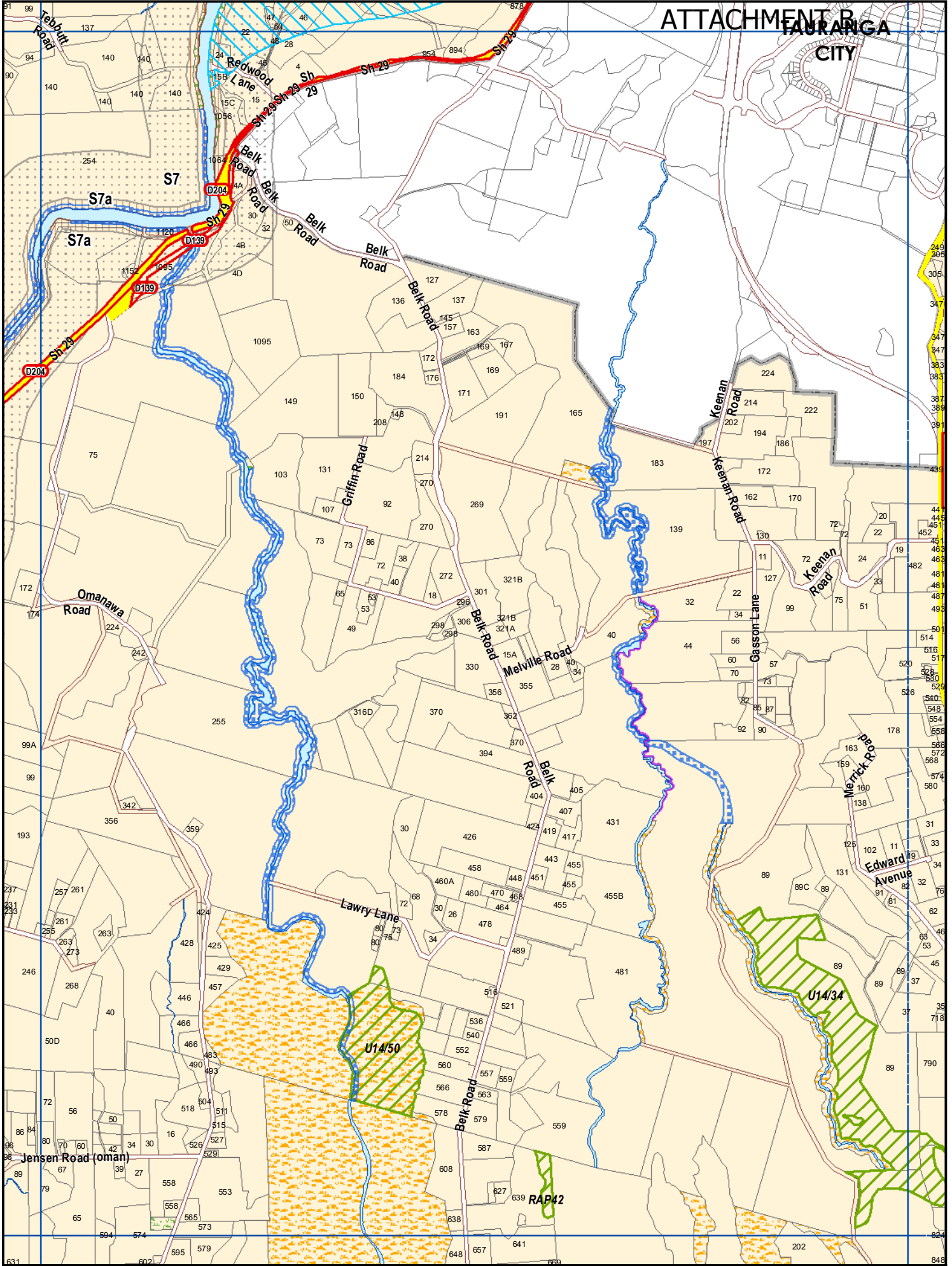
H05 Rural Series

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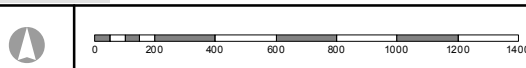
Western Bay of Plenty District Council

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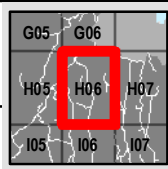


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12A. Proposed Esplanade Reserves, Esplanade Strips and Access Strips

Explanatory Statement

Preservation of the natural character of and public access to and along, the coastal marine area, lakes and rivers are matters of national importance listed in the *RMA*. To give effect to these principles, *Council* has adopted a Recreation and Leisure Strategy as part of the *LTP* which, along with the ward reserves management plans, documents the future requirement for recreation reserves in the *District*. This is in order to ensure that the needs of future generations can be met.

Reserves serve functions additional to recreation. The *RMA* particularly specifies the need for esplanade reserves and strips to provide access and for riparian protection. For *lots* less than 4ha an esplanade reserve or strip will be required in all cases; if it is not required for access purposes it shall be set aside for conservation purposes. For *lots* of 4ha or greater *Council* will secure esplanade reserves or strips for access purposes as provided for in the District Plan or for conservation purposes if the *riparian area* is covered predominantly in native vegetation. In these circumstances *Council* may engage more cost effective techniques than purchase or compensation e.g. Regional Council Environment Plans and Department of Conservation acquisition/protection (See also Section 5), or riparian protection utilizing Section 18.4.2(h) combined with Access and Esplanade Strips.

The existence of, or an intention to acquire, an esplanade does not mean that public access will be formed over that reserve or strip but it gives a right of legal public access and makes provision for future generations where the opportunity might otherwise be lost. The intention to form public access, and the timeframe for such, shall be determined by the Recreation and Leisure Strategy and the Reserves Management Plan process.

12A.1 Significant Issues

1. The *District* has a rapidly growing population and a visitor industry that is placing increased demands on reserves assets.
2. The integration of available methods to secure appropriate access to and along key waterways.
3. Esplanades have an important conservation role regarding riparian protection and water quality.

12A.2 Objectives and Policies

12A.2.1 Objectives

1. The provision of a network of reserves and facilities which satisfies the sport and leisure needs and aspirations of residents and visitors to the *District* whilst enhancing the natural, historic, educational and amenity values of the *District*.
2. The protection of high quality *riparian areas* for conservation purposes.
3. The integration of methods to secure strategic access along *riparian margins* and protect riparian conservation values.

12A.2.2 Policies

1. Gain reserve lands for sport and leisure, walkways and esplanades in line with the priorities identified in *Council's LTP*, through the criteria as set out in the District Plan, and by any other appropriate means.
2. Provide better access to natural features and recreational opportunities of public interest and provide better access to public land and facilities within reserves that enhance informal and unstructured leisure activities.
3. Require the protection of *riparian areas* covered in native vegetation as esplanade reserves or strips or by other appropriate means where esplanades may not be the preferred option, e.g. *riparian margin* retirement.
4. Ensure that significant ecological values are not adversely affected by the provision of public access to reserves.

12A.3 Rules

12A.3.1 Subdivision (taking of esplanade reserves or strips for access or recreation purposes)

- (a) Land required for esplanade reserves or strips (regardless of *lot* size) is shown on the Planning Maps and listed in Appendix 4.

- (b) In addition to (a) above, the requirement for an esplanade reserve or esplanade strip may be applied to provide access to swimming holes, picnic sites, waterfalls, cascades, Department of Conservation land, harbours and estuaries, known fishing areas, and where such access provides linkages to existing legal public access such as formed and unformed roads and existing reserves or strips.
- (c) Provision of public access may be required through the proposed subdivision to allow the public access from a public road to an esplanade reserve or esplanade strip, particularly at strategic access locations. *Council* shall consider the following:
 - (i) The effects of the proposed *development* and the need for public access to the esplanade, including the closeness of alternative access points to the esplanade;
 - (ii) The value and level of public benefit that is likely to result by providing access to the esplanade;
 - (iii) Compensation shall generally be payable.
- (d) *Council* may, and generally will, acquire an esplanade reserve on both banks along all those portions of creeks, streams and drains which exceed 3m in width within all Residential Zones.
- (e) Where a subdivision establishes a *lot* of 4ha or less adjacent to a *riparian margin*, *Council* may require an esplanade reserve or esplanade strip for access, recreation and conservation purposes to be established.
- (f) Esplanade reserves and strips may be waived in part or in full in the following circumstances:
 - (i) Where the land is already, or will be protected in perpetuity by way of subdivision consent notice, Queen Elizabeth II National Trust covenant, Reserves Act 1977 covenant or other registerable legal instruments acceptable to *Council* subject to appropriate alternative provision being made for public access along the water body concerned;
 - (ii) Where the subdivision is a boundary adjustment;
 - (iii) Where an existing *structure* is located within the 20m reserve and an appropriate esplanade reserve or esplanade strip or access strip cannot be established;

- (iv) Where an existing *structure* is located within the 20m reserve and an appropriately smaller esplanade reserve or esplanade strip and/or access strip can be established;
 - (v) Where by reason of security an esplanade reserve would be inappropriate and security cannot be assured by some other means. For example where there is defence lands, sensitive machinery, irrigation works or activities. Where appropriate, alternative access to deviate around the facility and maintain a continuous public access route in the vicinity may be required;
 - (vi) Where by reason of public safety, an esplanade reserve would be inappropriate and public safety cannot be assured by some other means. For example physically dangerous sites, port activities, including reclamations, defence lands, industrial subdivisions for activities including *hazardous substances*. Where appropriate, alternative access to deviate around the facility and maintain a continuous public access route in the vicinity may be required;
 - (vii) Where a public work or an electricity generation facility of regional or national significance is or is to be located on the foreshore or bank of a waterway, and for reasons of public safety and security the reserve and public access is not appropriate. Where appropriate, alternative access to deviate around the facility and maintain a continuous public access route in the vicinity may be required;

Where appropriate an esplanade for conservation purposes or other registrable legal instrument may be required to protect conservation values;
 - (viii) Where a work or *network utility* is or is to be located on the foreshore or bank of a waterway and for reasons of public safety and security the reserve and public access over the full 20m is not appropriate;
 - (ix) Where there are exceptional circumstances such as undue hardship, impracticality or cultural sensitivity.
- (g) Esplanade reserves and strips of greater width than 20m may be taken in the following circumstances:
- (i) Where there is an Identified Significant Ecological or Historic Heritage Feature that extends beyond 20m.

- (ii) Where *Council* considers the river bank or foreshore is prone to erosion or slippage;
 - (iii) Where topography or ecological values creates the need to form public access at a greater distance from the river bank or foreshore.
- (h) *Council* may substitute an esplanade strip for an esplanade reserve. Instances where esplanade reserves will be required are where there is a higher level of recreational use. An esplanade strip is more likely to be required where only infrequent access is necessary. Where an esplanade strip substitutes for an esplanade reserve and protection of native bush or vegetation is required then the esplanade strip instrument shall include provisions to this effect.
- (i) *Council* shall consider a Maori Reservation set aside under Section 338 and Section 440 of the Maori Land Act 1993 (Te Ture Whenua Maori) in lieu of an esplanade reserve or strip.

12A.3.2 Subdivision (protection of riparian areas through the taking of esplanade reserves or strips for conservation purposes)

- (a) Where *lots* which are less than 4ha are being formed, an esplanade strip or similar instrument shall be created for conservation purposes except where an esplanade has been identified for access in accordance with Rule 12A.3.1 in which case it shall be created in accordance with that rule.
- (b) Where *lots* which are 4ha or more are being formed and the *riparian area* is covered in predominantly native vegetation, an esplanade strip or similar instrument shall be created for conservation purposes except where an esplanade has been identified for access in accordance with Rule 12A.3.1 in which case it shall be created in accordance with that rule.
- (c) If an esplanade strip is set aside as part of a riparian protection *lot* subdivision then compensation from *Council* shall not be payable on the esplanade strip.

12A.3.3 Resource consents

As a condition of a resource consent *Council* may require the setting aside of an esplanade reserve or strip or access strip to mitigate the effects of an activity.

12A.4 Other Methods

- 12A.4.1 The *Regional Council* management plans are suitable for targeting specific areas, particularly where *lot* sizes are 4ha or greater.
- 12A.4.2 The use of other public land will be considered such as road reserve and Department of Conservation land.

3.0 Plan Change 33 - Recommended Changes to the District Plan First Review

3.1 The purpose of this part of the report is to show the Proposed Plan Change in full including any recommended changes in response to the submissions and further submissions.

3.2 Recommended changes to the District Plan First Review are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this Planning Report in blue.

3.3 That Planning Maps H05 and H06 are amended as shown on the pages to follow;

Note: They exclude the Collins, Carson and Graham and Hanvey properties.

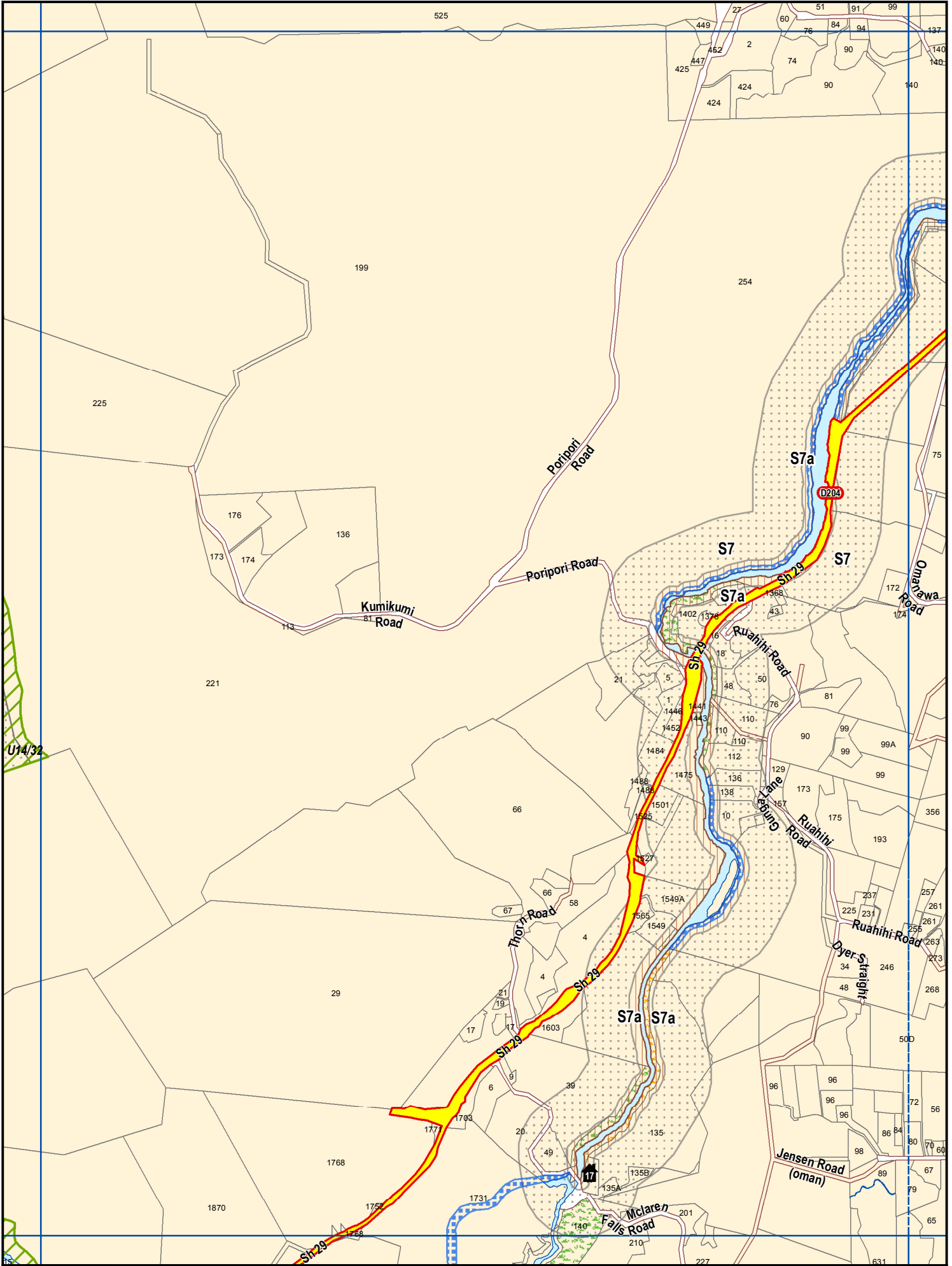
3.4 That Appendix 4 is amended as follows;

1. An esplanade strip of 10m in width or 20m in width where topography dictates a wider strip is necessary to provide public access shall be set aside along the rivers and streams identified in the District Plan namely:

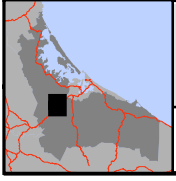
(xvii) The true left bank of the Wairoa River from Wairoa Road to Ohourere Stream approximately 250m downstream of the State Highway 29 Bridge at Poripori Road. 500m upstream of the Kaimai Canoe Club site (which is on the reserve at Lot 1 DPS 29327) to where a suitable river crossing may be formed above potential flood waters.

3. An esplanade reserve 20m in width (or lesser width if there are special circumstance, e.g. buildings within 20m of the foreshore) shall be set aside in the locations identified in the Planning Maps along the Harbour foreshore in particular:

(iv) along the true right bank of the Wairoa River from Omanawa Road to, but not including, the Ruahihi Power Station on State Highway 29.



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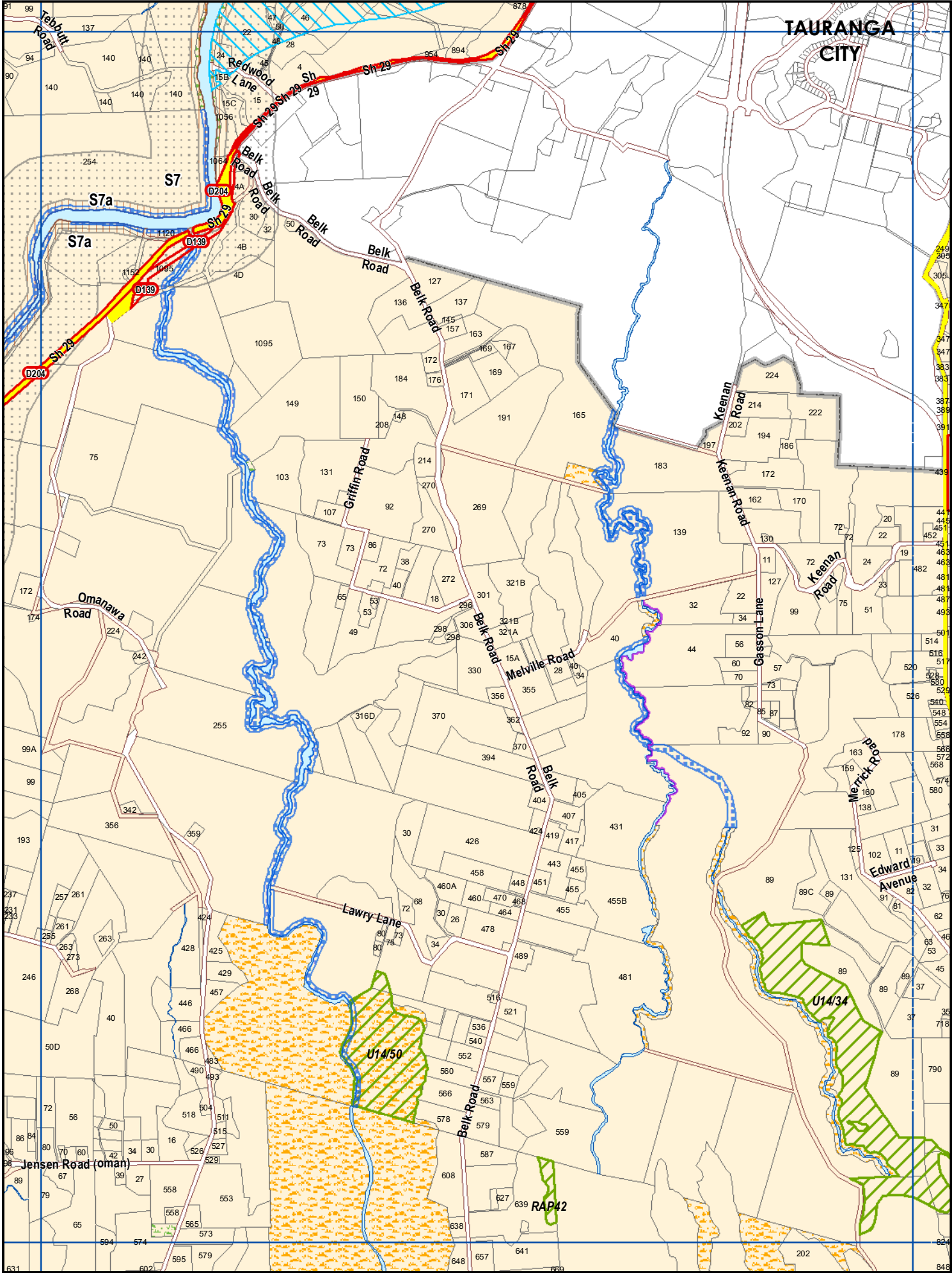
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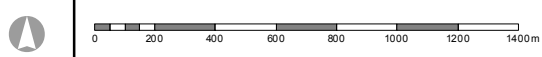
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District Council

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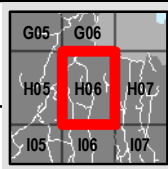


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