

# The Queen's Chain around New Zealand's coasts, lakes, and rivers

## Provisions directly affecting public access and use

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(For use in FMC 'Backcountry Recreation 2000' workshop only)

CHARACTERISTIC	CONSERVATION ACT 1987 as amended by CLR Act 1990 and Conservation Amendment Act 1990	RESOURCE MANAGEMENT ACT 1991 and RESERVES ACT 1977.	LOCAL GOVERNMENT ACT 1974
Name	MARGINAL STRIP	ESPLANADE RESERVE	PUBLIC ROAD
<b>Lands able to be reserved as strips:</b>	Any lands of the Crown. [S. 24 (1) ].	Applies to any lands requiring territorial consents for subdivision (S. 230 RM Act).	Yes
—Crown Land			
—Closed roads, streets	Yes, if lands of the Crown.	Yes but discretion rests with territorial authority as per district rules (RM Act S 77).	Not applicable
—Private lands	No	Yes	Yes, on dedication by land owner.
—Railway lines	Yes (S. 24K).	No specific provision, but could apply to subdivisions.	
<b>Purposes</b>			
—Public Access	"To enable public access to any adjacent water courses or bodies of water. [S. 24C].	"To enable public access to or along the sea, a river, or a lake..." (RM Act S 229(2)(a)).	Not specified in statutes. Common law has established rights of public and frontagers' passage as implied purpose.
—Public Recreation	"For public recreational use of the marginal strips and adjacent water courses or bodies of water." [S. 24C].	"To enable public recreational use of the esplanade reserve and adjacent sea, river, or lake, where that use is compatible with conservation values." (RM Act S 229(2)(c)).	

—Conservation	<p>“For conservation purposes, in particular—</p> <ul style="list-style-type: none"> <li>(i) The maintenance of adjacent water courses or bodies of water; and</li> <li>(ii) The maintenance of water quality; and</li> <li>(iii) The maintenance of aquatic life and the control of harmful species of aquatic life; and</li> <li>(iv) The protection of the marginal strips and their natural values.” [S. 24C].</li> </ul>	<p>“To contribute to the protection of conservation values by, in particular—</p> <ul style="list-style-type: none"> <li>(i) Maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or</li> <li>(ii) Maintaining or enhancing water quality; or</li> <li>(iii) Maintaining or enhancing aquatic habitats; or</li> <li>(iv) Protecting the natural values associated with the esplanade reserve; or</li> <li>(v) Mitigating natural hazards” (RM Act S 229(2)(a)).</li> </ul>	<p>No provision in statutes. many unformed roads, and the margins of formed roads, have natural values and buffering value along watercourses.</p>
<p><b>Application to:</b> —Rivers &amp; Streams</p>	<p>“...along and abutting the landward margin of —the bed of any river or stream (not being a canal under the control of Electricorp used for, or as part of any scheme for, the generation of electricity), being a bed that has an average width of 3 metres or more.” [ S. 24 ].</p>	<p>“along the bank of any river” (RM Act S 229), subject to power of waiver under district rules.</p>	<p>Substantial lengths of river bank have both formed and unformed roads.</p>
<p><b>Application to:</b> —Lakes</p>	<p>“...along and abutting the landward margin of—the maximum flood level of any lake not subject to control by artificial means (calculated on the basis of its maximum flood level of all its bays and inlets) that has a surface area exceeding 8 hectares at that level.” [ S. 24 ].</p>	<p>“along the margin of of any lake” (RM Act S 229), subject to power of waiver under district rules.</p>	<p>Substantial lengths of lake shores have both formed and unformed roads.</p>
<p><b>Application to:</b> —Sea Coast</p>	<p>“...along and abutting the landward margin of—any foreshore.” [ S. 24 ].</p>	<p>“along the mark of the mean high water springs of the sea” (RM Act S 229), subject to power of waiver under district rules.</p>	<p>Substantial lengths of sea coast have both formed and unformed roads.</p>

### Triggers for establishment

- (i) "Upon disposal by the Crown of any land..." [ S. 24]
- (ii) On granting of a Crown forestry licence under the Crown Forests Assets Act 1989. [ S. 24 (9)].
- (iii) On the granting or renewal of a lease or licence under the Land Act 1948. [ S. 24(9)].
- (iv) On railway line disposals (S 24K).

- (i) On approval of susubdivisional survey plan by territorial authority (RM Act S 233).
- (ii) Stopping of road under S 345(3) LG Act.

- (i) Initial subdivision and settlement by Crown.
- (ii) Subsequent closer settlement of Crown and private lands.

### Exemptions from establishment

Minister may exempt rivers and streams if satisfied little or no value for purposes, or can be protected by other means. Minister can exempt at renewal of lease or licence if satisfied is equitable and in public interest. Minister may exempt 'core assets' of Electricorp and when land required for electricity works (S 24B).

Total or partial waiver discretion rests with territorial authority per district rules if satisfied that—  
 "by reason of security, public safety, minor boundary adjustment, or other exceptional circumstances" it would be inappropriate, or  
 (ii) The land has little or no value in terms of the purposes, or  
 (iii) Any value can be adequately protected by other means (RM Act S 77).

Territorial authorities may not require public road status as legal access to subdivisions; private roads and rights-of-way may be alternative.

#### Transitional provisions:

Minister's consent for 3 years from 1/10/91 or until district plans reviewed (RM Act S 405).

### Width

- (i) 20 metres wide, [ S. 24 ] or "a width extending from the maximum operating level to the maximum flood level of any (artificially controlled) lake or reservoir, whichever is the greater." [ S. 24 ].
- (ii) Any (the same) width for any Crown land, immediately before commencement of this section, that was reserved from sale or other disposal. [ S. 24(3)].

"Not less than 20 metres" (RM Act S 230. Under district rules "a width greater or less than 20 metres"...if satisfied that the purposes of esplanade reserves "will not be significantly deminished."

Generally 20 metres; can be less.

<b>Reduction in width provisions</b>	Along margins of lake or sea to not less than 3 metres if Minister satisfied that its value in terms of purposes will not be deminished (S 24A).	Discretion under district rules to reduce to "less than 20 metres"...if satisfied that the purposes of esplanade reserves "will not be significantly deminished". <u>Transitional provisions:</u> Minister's consent for 3 years from 1/10/91 or until district plans reviewed (RM Act S 405).	Treated as partial 'stopping' action.
<b>Provisions for revoking</b>	None	None in Resource Management Act but Reserves Act could apply.	Requires public objection process for 'stopping' with right of appeal to Planning Tribunal.
<b>Public notice and objections to revocations and waivers</b>	Gazette notice only for exemptions from of marginal strips; no public notice of reductions in width; no provision for public objection.	As per Reserves Act.	As above, but no right of objection to decisions not to establish roads.
<b>Disposal/sale of (former) strips</b>	The Crown may sell or otherwise dispose of any land declared not to be a marginal strip to the person for the time being owning the adjoining land or to Electricorp if any of its core assets abut the land to be disposed of. [ S. 24D]. No provisions for public notice or objection to disposals.	As per Reserves Act.	Territorial authority has power to sell, lease, or redesignate for reserve purposes.

**Effect of change to boundary of strip**

(i) "Where for any reason the shape of any foreshore or of any margin of any lake or reservoir (or of any bay or inlet)...the course of any river or stream...is altered and the alteration affects an existing marginal strip, a new marginal strip shall be deemed to have been reserved simultaneously with each and every such alteration." [ S. 24F ].

(ii) provisions only apply to all lands of the Crown, on all land the title to which is subject to reservation and movable marginal strip provisions, and to no other land. [ S. 24F ].

(iii) Movable strip provisions do not apply to strips reserved from sale or other disposal for the purposes of the Conservation Act or any other Act (eg Land Act), immediately before commencement of the movable strip provisions. [ 24F ].

No provisions for changes of boundaries, however land exchanges could be instigated.

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**Land exchanges**

Minister may exchange strip of part strip for other land to become marginal strip (S 24E).

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**Vesting of management**

In Crown, however the Minister may from time to time appoint adjoining land owners or other more suitable persons to be managers of marginal strips, except around controlled lakes and reservoirs." [ S. 24H].

Management remains vested in territorial authority as a local purpose reserve (S 23 Reserves Act); with agreement from territorial authority can vest in Crown as reserve (RM Act S 230).  
No provision for private managers.

Government purpose roads vested in Crown.  
Other public roads vested in district councils.

<b>Powers of manager</b>	<p>(i) "Subject to ( S. 24H) the manager...shall— —Manage the strip in a way that best serves the purposes specified in S. 24C; and —Enable members of the public to have access along the strip." [ S. 24H (4)].</p> <p>(ii) "Subject to ( S. 24H) the manager...may— —Make improvements to the strip, and the improvements may include the planting or harvesting of crops or trees, or both; and —May request the Minister to temporarily close the strip under S 13 where any proposed operation will significantly affect public safety or where fire hazard conditions exist (S 24H(7)).</p>	Managed subject to Reserves Act.	Controlling authority's general powers limited by S. 319 LG Act 1974.
<b>Controls over manager</b>	<p>"The manager of a marginal strip shall comply with any reasonable requirements or restrictions imposed in respect of the strip by the Minister by notice in writing to the manager; and the Minister shall impose such requirements or restrictions, or both, as the Minister considers reasonably necessary or expedient to protect the strip, having particular regard to the maintenance of riparian vegetation, wildlife, water quality, the health of aquatic life, and to maintain access to and the recreational use of the strip." [ S. 24 (6)].</p>	<p>Having regard to the specific purpose of the reserve it shall be administered according to the primary purpose of the reserve provided that in the case of esplanade reserves nothing shall authorise anything that would impede the right of the public freely to pass and repass on foot, unless the administering body determines that access should be prohibited or restricted to preserve the stability of the land or the biological values of the land. Access may be prohibited to the whole or specified part of a local purpose reserve except under the authority of a permit (Reserves Act S 23)</p>	LG Act and civil action by adjoining land owners or members of the public.
<b>Resumption of management by Crown</b>	<p>"On giving 90 days notice in writing to the manager of a marginal strip or such longer period as may be provided for in any agreement between the manager and the Crown, the Minister, on behalf of the Crown, may resume the management of the strip." [ S. 24 J].</p>	Not applicable.	Not applicable.

**Trespass Rights**

(i) The ability to issue leases and licences carries with it the creation of legal occupier status and trespass rights.  
 (ii) Occupier status with trespass rights is implicit with manager having the ability to close the strips to the public.

The ability to issue leases and licences under Reserves Act carries with it the creation of legal occupier status and trespass rights.

While legal road, not capable of having trespass rights conferred. Incapable of being 'possessed' by anyone to the exclusion of the public.

**Closure of public access**

4 reasons for closure provided by S 13 Conservation Act—  
 —if requested by manager;  
 —if in accordance with management plan or strategy;  
 —for conservation of any natural or historic resource in the absence of a management strategy or plan;  
 —public safety or emergency

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Mechanisms available—  
 'Stopping' — a permanent closure via 10th Schedule  
 "Temporary prohibition of traffic" (actions by local authority or police under 10th Schedule).  
 Temporary prohibition of vehicles via Transport (Vehicular Traffic road Closure) Regulations 1965.  
 Civil defence emergencies.

**Offences**

Hunting except fishing; have in possession any animal or animal product other than fish; discharging firearm without permit; entering closed strip.

Reserves Act provisions apply.

Encroachment; altering road without consent; leaving harmful substances; use of road when closed; obstructing public way; acting contrary to any bylaw or regulation.