

## 9. Access along rivers, lakes and the coast Frequently Asked Questions



*This FAQ answers common questions about access to water margins and riverbeds. It also describes the effects of erosion and accretion on public access.*

### Public access to water margins

#### Does the public have a right of access alongside all rivers, around all lakes and along the coast?

No. However, public access reservations have been made alongside many New Zealand rivers and around many lakes and much of the New Zealand coast. The publicly reserved land that exists alongside most waterways and the coast is commonly referred to as the 'Queen's Chain'.

#### What is the 'Queen's Chain'?

This is a commonly used term for a strip of public land, usually 20 metres wide (or one chain in pre-metric measure), that has been set aside for public use around much of the coast, around many lakes, and along all or part of many rivers. It is not a legal term.

#### Do all rivers have a 'Queen's Chain'?

No, the reservations were not set aside consistently so some rivers have no reserved strip at all, some have strips on one side but not the other, and there are often gaps in the strips along a particular river. The situation is similar for lakes.

### Does the entire coast have a 'Queen's Chain'?

There are gaps in the strip of land reserved around the coast. These coastal reservations were originally made above the high tide mark (technically "mean high water springs"). The land below the high tide mark is now, with some exceptions, the common marine and coastal area (formerly the public foreshore and seabed). The common marine and coastal area is open to public access. For detailed information about access to the common marine and coastal area, refer to the Marine and Coastal Area (Takutai Moana) Act 2011.

### What legal form does the public land along water margins take?

The earliest and largest proportion of the reservations is legal road, most of which is unformed. Then there is marginal strip, esplanade reserve, and various other forms of public reserve. There is also esplanade strip, which is a form of statutory easement.

### Are all water margin reserves open to public access?

As a general rule, yes. There may be some exceptions, especially in respect of

esplanade reserves and strips. If in doubt you should check with the responsible authority. This will be the district or regional council or the Department of Conservation, depending on the form of the reservation (marginal strip, esplanade reserve, unformed legal road etc).

### **Where can I find information about water margin access and the authority responsible for any reserves I'm interested in?**

The Walking Access Mapping System ([www.wams.org.nz](http://www.wams.org.nz)) shows the location of most water margin reserved land. By switching on the 'Administrative Boundaries' information layer, the mapping system can also be used to determine the administering authority. Questions about specific areas should be directed to the administering authority. Enquiries about water margin access can also be made to the Commission, preferably through the enquiry function provided by the Walking Access Mapping System.

### **Is all water margin access shown in the Walking Access Commission's Walking Access Mapping System?**

All of the water margin access that can be identified in the cadastral records held by Land Information New Zealand (LINZ) is shown. It is possible that some reserve land administered by local government that cannot be readily identified as open to public access in the LINZ records has been omitted. More significantly, most of the marginal strips that were created on the disposal of Crown land between 10 April 1990 and 30 June 2007 are not shown as these have not been identified in LINZ records.

## **Public access to riverbeds**

### **Are riverbeds open to public access?**

They may be if they are owned by the Crown. There is no right of public access to Crown owned riverbeds, but the Crown does not generally object to public access provided that access does not conflict with some other Crown use. Access is a matter for the lessee as the lawful occupier if the Crown owned riverbed has been incorporated in a lease.

### **How do I know if the riverbed is owned by the Crown?**

An indication may be able to be found by studying the area in the Walking Access Mapping System ([www.wams.org.nz](http://www.wams.org.nz)). If the relevant part of the river is entirely within a private land parcel then it is probably private land. If the river is designated as a 'hydro area' within the mapping system and is bounded on each side by public land it is almost certainly Crown owned.

If in doubt the Commission may be able to help. Any enquiry should preferably be made through the mapping system's enquiry function. Land Information New Zealand (LINZ) may also be able to help.

### **Who owns riverbeds that are not within private land parcels and are not owned by the Crown?**

Where a private land parcel adjoins a river that is not navigable the owner of the land has what is called *usque ad medium filum aquae* (AMF) right. This is a common law right of presumed ownership of the adjoining river bed to the midpoint of the river. This right is not the same as registered fee simple title as it can be defeated by a

stronger claim. There is no public right of access over riverbed subject to AMF rights.

Both Crown ownership and AMF rights may be complicated by the effect of changes in the course of the river; that is, the impact of erosion and accretion.

## The effects of erosion and accretion

**What happens to public access if a water margin reservation (unformed legal road, marginal strip, esplanade or other public reserve) is submerged by a gradual but permanent movement in the course of a river, the level of a lake or the high tide mark on the coast (erosion)?**

The reserved land stays where it is and public access on dry land will be lost if the full width of the reserved land is submerged.

### Are there any exceptions to this?

There are two forms of public access alongside rivers, lakes or the ocean that move with any movement in the water margin. These are esplanade strips (as distinct from esplanade reserves), and marginal strips that were established from 10 April 1990. These forms of access are not affected by movements in the related water margins.

**What happens to public access when a gradual but permanent movement (accretion) in the course of a river, the level of a lake or the high tide mark on the coast results in the water margin moving away from the original water margin reservation**

### (unformed legal road, marginal strip, esplanade or other public reserve)?

The unformed legal road or other reservation increases in width as the water retreats. The additional land becomes legally the same as the original reservation. Public access is not lost. In the case of the exceptions referred to above (movable marginal strips and esplanade strips) the public access remains the same width alongside the water margin.

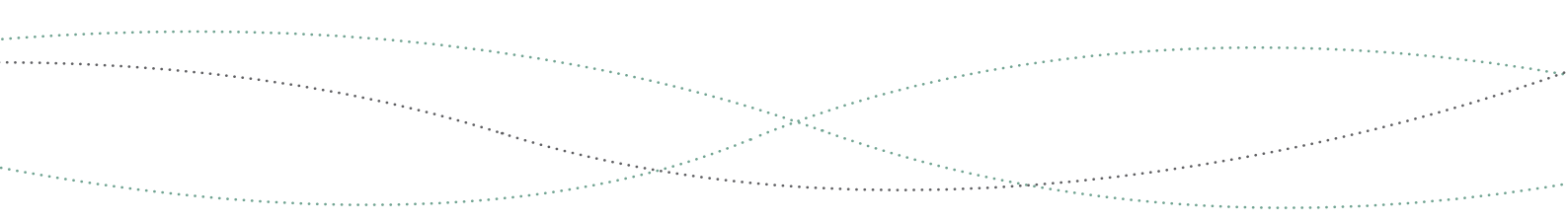
### How does erosion and accretion affect private property?

Erosion along a water margin, if it advances through private property, results in land being lost to the advancing water body. Accretion along a water margin that forms the boundary of private land (that is, where there is no public reservation along the water margin) results in a gain to the private land.

### How are these movable water boundaries defined?

It depends on the definition of the boundary in the survey plans of the particular land parcel. An indication can be gained from the current statutory definitions of riverbed, lake bed and foreshore (or the coastal and marine area). For example, riverbed and lake bed in the Conservation Act 1987 are defined as:

- (a) *in relation to any river, the space of land which the waters of the river cover at its fullest flow without overtopping the banks; and*
- (b) *in relation to a lake, the space of land which the waters of the lake cover at its highest level without exceeding its physical margin.*



In the Marine and Coastal Area (Takutai Moana) Act 2011 the *marine and coastal area ... means the area that is bounded, (i) on the landward side, by the line of mean high-water springs.*

Coastal land parcels were, however, commonly, but not always, surveyed to the mean high water mark.

### **How did these laws come about?**

The law on water margin boundaries is a combination of inherited English common law, Crown subdivision rules and practice, New Zealand judicial decisions, and New Zealand legislation. This history cannot be undone and has resulted in a complex mix of property rights.

### **How can I find out about the impact of erosion and accretion on public access along water margins?**

The impact may be able to be discerned from a study of the legal boundaries and the topographical and photographic view of an area in the Walking Access Mapping System. The legal effects can, however, be quite complicated and require expert advice. The Commission is happy to help but, where there are differences over legal boundaries, these may sometimes only be able to be resolved by the Courts.