



Interrelationship Between the Reserves Act and Other Statutes

*With particular regard to resource management, finance,
local government responsibilities, and regional parks*

This Chapter demonstrates the relationships between the Reserves Act and the two critical statutes that govern a local authority's activities: the Local Government Act 1974 (LGA) and the Resource Management Act 1991 (RMA).

The Act, the LGA and the RMA set out the core regulatory functions of local authorities and generally impact on all aspects of reserve land management – from financial planning and funding of assets and services, to governing land use and planning matters.

In most cases the Act is administered by the operational and asset management parts of a local authority. The RMA is administered by a local authority's regulatory units. There are activities and proposals that need to have the input of both operational and regulatory parts of a local authority. Therefore it is important to be aware of the applications of all three statutes and how they interrelate.

The first part of this Chapter looks at the Act and the LGA. The second deals with the Act's relationship to the RMA.

The Local Government Act and the Reserves Act

The LGA and the Act are complimentary in their intentions and deals with the general powers and functions of regional Councils, unitary authorities, and territorial local authorities. It enables and directs administrative processes. The Reserves Act provides specific powers for the administration of reserves.

Which Act Applies?

The question arises with the administration of a reserve vested in the Council (or over which the Council has an appointment to control and manage). **The relevant statutory provisions under which decisions will be made about the reserve will most**



likely be found in the Reserves Act. The Reserves Act generally takes precedent in the case of administrative issues affecting reserves.

Refer to the LGA for the following matters:

- the general conduct of the Council's affairs in managing a portfolio of reserves (s.223C)
- annual planning for reserves (s.223D)
- annual reporting on fiscal aspects of reserves administration (s.223E)
- financial systems, reporting and record keeping procedures associated with Council revenue from and expenditure on reserves (s.223F)
- acquisition of property by the Council for a public reserve (s.225)
- transfer of Council land to the Crown as a reserve (s.236)
- Council documentation relating to reserves (Part XVII)
- transfer of land not required for a road to the Crown for a reserve or addition to a reserve (s.345(1)(d))
- creation of an esplanade reserve vested in the Council on stopping of a road (s.345(3))
- management plans for forestry operations on reserves (s.578)
- recreation and community development (Part XXXVI)
- bylaws making procedure (s.681).^{1&2}

Some other powers are specifically excluded as they apply to reserves (see below).

If you are in doubt over whether the Reserves Act or Local Government Act applies, or both Acts apply to a particular decision, you should seek legal advice.


Limited Application of Local Government Act

Note that the Local Government Act has a number of provisions that specifically exclude application of the Act to public reserves. It affects the following actions:

- sale or exchange of a reserve (s.230(8))
- lease of a reserve or a building on any reserve (s.231(1))
- grant of easements (s.235)
- undertaking farming on a reserve (s.576)
- establishment, tendering and utilisation of forests on reserves (s.577)
- operation of camping grounds, cabins, huts and motels in reserves (s.594)
- dealing with the interests of the Crown in any reserve vested in the Crown (s.724(2)).

These decisions can only be made under the corresponding provisions of the Reserves Act.

The lessee or licensee or other person claiming an interest in a reserve vested in the Crown is to be treated under the Local Government Act in the same way as the holder of any private property (s.724(3)).

 **1** Bylaws made pursuant to s.106 of the Act are subject to the procedures set out in s.681 Local Government Act.

2 Most local authorities use as a basis for their bylaws the New Zealand Standard NZS9201 "Model General Bylaws". In 1999 this Standard was revised. NZS9201 includes models for public places and cultural and recreational facilities.



An administering body, appointed under s.28 Reserves Act to control and manage a reserve vested in the Crown, is deemed to have an interest in the reserve by virtue of that appointment (s.724(4)).

Councils should bear in mind that their processes are not just subject to public scrutiny under the Reserves Act, but also under their general conduct under Local Government Act procedures and decision-making. A clear understanding of the outcomes sought through a proposal is needed by both the administering body and the public.

Practice Note: A Case Study on the Exchange of Part of a Public Reserve

Background

A North Island Conservancy received a request from a Council for approval to an exchange of part of a scenic reserve for other land under s.15 of the Reserves Act 1977. This reserve was purchased by the Council with contributions from Forest and Bird and the Forest Heritage Fund. A condition of the Crown funding was the requirement that the land be classified as a scenic reserve and vested in the Council as part of its parks and reserves network.

Actions Taken

In January 1996, a Committee of the Council considered an application from a local developer to exchange part of the reserve for an adjoining wetland, so the development on a proposed airfield on the adjoining private land could be facilitated. The Committee granted the application. It was only at that stage that the Council contacted the Conservancy office and was made aware of the correct status of the land as a scenic reserve and the requirement to comply with the terms of s.15 of the Reserves Act. The proposal was publicly notified, and there was a considerable amount of public interest in the application, with only two submissions in support.

Decision-making: Council Committee

When the matter came up for a public hearing of the public submissions under s.120 of the Reserves Act, the Committee resolved to appoint a Hearings Commissioner, and the Council endorsed this appointment. The Commissioner then proceeded to hear the many submissions in terms of s.15 of the Act. On completion of the hearings, his report was referred to the Committee accompanied by an independent botanical assessment of botanical issues raised at the hearings by the objectors. The Committee resolved to accept the recommendation of the Commissioner that the exchange not proceed.

All seemed to have been settled and most of the objectors were satisfied. Meantime, the Parks Manager commissioned a further botanical report on the values of the reserve, but this report was not referred back to the submitters. Two weeks later, a newly reconvened Committee which included members other than those who had accepted the Commissioner's recommendations at the earlier meeting, resolved to revoke the earlier resolution of the Committee and approve the exchange of the park land.



Practice Note Cont'd

DoC Process: Ministerial Consent

The second resolution of the Committee together with relevant supporting material was referred to the Conservancy for the authorisation of the Minister under s15 of the Act. This request was carefully considered by the staff of the Conservancy, who were concerned at the process adopted by the Council, including the failure of the Council to provide a copy of the Council resolution. A matter of great concern was that the Council only provided a resolution of the Parks Committee, not the full Council, with no supporting reasons for the change of its initial resolution.

There was considerable public outrage at the reversal by the Committee of its initial recommendation, which was perceived as being for political reasons rather than for the purposes of the reserve.

At this stage the legal staff of the Conservancy and Head Office became involved, with the primary concern being whether the Council had complied with the terms of s15 of the Act by submitting a resolution of the Committee rather than of the full Council. Although further investigation of the Council records showed that the Committee resolution had been *received* by the full Council, it had not been *adopted*, and was therefore not a resolution of the administering body.

Outcome

- The Department advised the Council that the specific words of s.15 of the Reserves Act overrides the more generic delegation powers of a Council under s.114Q of the Local Government Act, and to remedy the defect it would be necessary for the Council to consider and if appropriate pass the s.15 (1) Reserves Act resolution. The Council was also advised that in light of the irregularities in the passing of the second Committee resolution without apparent reasons, that the whole hearing process should be reviewed in the interest of natural justice to the objectors.
- The Council's legal advice concurred with that of the Department. Therefore the Council proceeded to recommence the notification, consultation and hearing process for the proposal from the beginning.

Suggestions of Points to Watch

- **Delegation of Decision-Making: Which Act Applies?**
S.114Q of the Local Government Act provides that a Council may delegate certain functions, duties or powers to a committee or subcommittee of Council. Every such committee may, without confirmation by the local authority, exercise or perform them in like manner and with the same effect as the local authority could itself have exercised or performed them. Not surprisingly, the Council interpreted this section to mean that the resolution of the Parks Committee would be adequate to comply with the provisions of s.15 of the Reserves Act. However, this interpretation was not correct.

Section 15 states:



Practice Note (Suggestions of Points to Watch) Cont'd

The Minister may, by notice in the Gazette, authorise the exchange of the land comprised in any reserve or any part or parts thereof for any other land to be held for the purposes of that reserve:

Provided that this power shall not be exercised with respect to any reserve vested in an administering body except pursuant to a resolution of that body requesting the exchange.

Therefore, a resolution of full Council is required by the Minister and overrides the s.114Q Local Government Act ability to delegate. The key aspect is the term "administering body" for the purposes of the Reserves Act is the Council and not a committee or officer of the Council.³

- **Professional Advice**

Legal and other expert advice is often needed to confirm reserves status and the correct decision-making process to use (or that has been used) under the Act and other statutes. A Council needs to be very clear what procedures the Act requires and be aware that generally, the Act takes precedence over the Local Government Act 1974.

- **Effect of New Delegation**

Since the events reported in this case study occurred, the s15(1) power of the Minister to authorise the exchange of land in any reserve for any other land has been delegated to councils (along with other powers described in Chapter 2 and appendix 2c). This delegation only applies where the council did not derive title from the Crown. In addition, the council must consult with the Crown before making a decision under s15(1) if the land it proposes to grant in exchange was purchased with funds provided either in whole or in part, by the Crown.

If this delegation had been in effect in January 1999, then the Council would have had to consult with the Conservancy because Crown funds from the Nature Heritage Fund, were used to help purchase the reserve.

- **Consultation**

The process of public consultation under the Act is quite specific and requires careful consideration at each stage of the decision making process.

Contributed by Isabel Field, Solicitor, Auckland Conservancy, Department of Conservation.



3 Refer to Chapter 2 "Administering Body" (page 2.2) for further information regarding delegations of powers under the Act.

Revenue from Reserves

Financial practices of councils are generally dictated by the Local Government Act and standard accounting procedures. The Reserves Act also has financial management requirements that administering bodies must take into account.

Part IV of the Act includes requirements to be met by reserve administering bodies in dealing with revenue derived from reserves.



S.78 directs that all money received “by way of rent, royalty, or otherwise in respect of dealing with any reserves. . . shall –

“a) Where the reserve is vested in an administering body or an administering body has been appointed to control and manage the reserve, be held by the administering body and applied for the purposes of this Act.”.

Exceptions to the Part IV requirements (where a local authority is the administering body) allow the local authority:

- in relation to a portfolio of reserves, to pay the revenue into either:
 - a separate bank account to be called “The Reserves Account” (s.79(2))
 - its general bank account (s.79(4))
- to bank money in accordance with any regulations made under s.223 Local Government Act (s.79(2))
- to apply revenue derived from trees grown on a recreation or local purpose reserve (if the Minister of Conservation so authorises) to:
 - any purpose for which the territorial authority may apply its funds
 - any specific purposes that the Minister of Conservation, with the consent of the Minister of Local Government, may direct (s.85A).

Otherwise, revenue from reserves received by the Council as administering body must generally be applied for the purposes of the Reserves Act (s.78(1)(a)). This includes money paid into the Council’s general bank account under the provisions of s.79. These purposes are: purchasing, taking on leases, managing, administering, maintaining, protecting, improving, and developing reserves under its control (s.80). The exceptions are set out below.

The Minister of Conservation, with the consent of the Council, may divert that revenue to a reserve with a different administering body. The Minister may also divert it to acquire or take on leases of land for the purpose of a reserve (other than by the Council) or as consideration for a conservation covenant (s.84).

With the consent of the Minister, the Council may direct that revenue be applied in managing, administering, maintaining, improving, protecting, and developing any land that is not a reserve (including any Maori reservation). The owner, trustee, or controlling authority of the land must :

- consent to the money being applied for those purposes
- agree to either:
 - permit the land to be used for the purpose of a reserve on agreed terms and conditions
 - co-operate in a scheme for preserving or restoring the character or amenity of a district or an environment (s.85).



If the Council is the administering body of a recreation reserve set apart for racecourse purposes⁴ then special provisions apply to revenue from the reserve (s.68).

When trees are planted for revenue producing purposes on a recreation or local purpose reserve, any monies received under s.42 of the Act from harvest are covered by ss.78, 79 and 85A of the Act (see above).

Since 1.4.78 afforestation by an administering body has required prior consent under s.75 of the Act by the Minister of Conservation (formerly Lands).

Other Accounting Practices

Part IV of the Reserves Act includes accounting practices to be followed by reserve administering bodies.

Exceptions to the requirements (where a local authority is the administering body) allow the local authority to:

- be exempt from submitting an annual report to the Minister of Conservation on its operations unless the terms of vesting or control and management require it (s.88(4))
- include a statement of annual accounts for its reserves portfolio in its overall annual accounts (s.88(5)).

Borrowing Moneys and Advances from General Fund

As a recreation reserve administering body a local authority may borrow money by way of special loan under the Local Authorities Loans Act 1956, as if for a public work for:

- improving or developing the reserve
- purchasing other land for addition to the reserve
- paying the consideration for any conservation covenant (s.90(1)).

Any local authority may also:

- apply or advance money from its general fund or account towards managing, improving, maintaining and protecting any reserve (s.89(1))
- make a contribution towards the cost of the Crown acquiring any land or interest as a reserve, or in payment for the consideration for any conservation covenant (s.89(2)).



4 See s.16(11)(a) Reserves Act.



Practice Note: Te Toto Gorge – A Partnership Between Council, Tainui and the Crown

For over 10 years, the Department of Conservation (DOC) had been negotiating with a landowner to purchase 193 hectares of their property as an addition to the adjoining Te Toto Gorge Scenic Reserve. Some Government funding was made available in 1998 but there was a short fall. Several 'creative' ways to obtain the balance were investigated and as it turned out, the Waikato District Council (WDC) was able to make a very valuable contribution.

WDC's involvement arose because of its interest in another reserve located within Hamilton City – the site of WDC's former administration building that had become surplus to requirements when WDC moved to its new site in Ngaruwahia. The old administration building straddled the boundary between the reserve (local purpose) and adjoining WDC freehold land. WDC's main objective was to regularise the building occupation. However, it should be noted that WDC could continue to use the reserve and was not required to purchase it from the Crown.

The proposal was complicated by the fact that title to the local purpose reserve would revert to Crown ownership when the reserve status was uplifted. There was also the need to consider requirements of Tainui's first right of refusal as provided in the Tainui Raupatu Claims Settlement Act.

Following considerable negotiation, DOC was able to establish a means to meet all parties' objectives while at the same time complying with legislative requirements. Tainui played a crucial role in the whole proposal. They supported acquisition of the Te Toto Gorge property and were prepared to relinquish their interest in the local purpose reserve to enable title to transfer from the Crown to WDC.

Rather than paying the Crown for the local purpose reserve (value \$350,000), the parties agreed that WDC would make a cash contribution to the Crown of \$160,000 to go towards the Te Toto Gorge scenic reserve addition. The balance of the value of the local purpose reserve (ie \$190,000) was to be targeted by WDC for approved conservation projects including land purchase, funding for conservation covenants and priority environmental enhancement projects.

WDC extended the partnership approach by applying to Environment Waikato's Environmental Initiatives Fund for a contribution towards their commitment to the Te Toto Gorge acquisition. Environment Waikato gave approximately 15% of WDC's contribution to the Crown.

The addition to the Te Toto Gorge Scenic Reserve was finalised in mid 1999.

Contributed by Nadine Storm, Department of Conservation, Waikato Conservancy and Gary Allis, Waikato District Council.



Practice Note 2: Gibraltar Farm, Native Forest Restoration Project, Port Hills, Canterbury

Background

Gibraltar Farm (117 hectares) includes one of the Port Hills few remaining stands of “old growth” Podocarp forest. The aim of the project was to achieve permanent protection of this forest and surrounding areas, including second growth gully bush.

The long term vision is to restore native forest to the upper, wetter part of the Southern Port Hills. This is a co-operative venture involving the Selwyn District and Christchurch City Councils, private land-owning conservation groups, and other interested parties such as Wai Ora Trust.

Actions Taken

A landowner approached Christchurch City Council with a sale and purchase proposal. Because the land was outside the district/territorial boundary, the Council applied to the Nature Heritage Fund for a grant. Unfortunately the application was deferred and subsequently lapsed.

Wai Ora Trust, independently, initiated a private application to the nature Heritage Fund for purchase of the land, which was approved. The Trust then appealed to both Selwyn District and Christchurch City Councils for assistance – the grant would only cover approximately a third of the purchase price.

Extensive consultation, negotiation and discussion was undertaken by both Councils, who agree to purchase the land, subject to the grant received by Wai Ora Trust (from the Nature Heritage Fund) being transferred to the Councils and the land being gazetted as Scenic Reserve under the Reserves Act. Selwyn District and Christchurch City Councils contributed the other two thirds of the purchase price (one third each).

The land is to be held in joint ownership by the two Councils, and managed by Christchurch City Council.

Outcome

The proposal took three years to achieve. Although time consuming and difficult to achieve overall “buy-in” from all parties, the resulting purchase and management arrangements have proved more acceptable to all parties, and the community – the burden has been shared.

Suggestions of Points to Watch

- Presentation of a “wider” vision, that is not limited to “territorial” boundaries, is crucial.
- Users of the proposed reserve and community supporters of the proposal are not concerned which Council controls, owns or manages which particular area of land – only that it is managed properly.
- Conservation and recreation issues often tend to go beyond territorial boundaries.

Contributed by Kelvin McMillan, Parks Unit, Christchurch City Council.



Regional Parks and Reserves – Wellington and Auckland

In 1992, s.619 Local Government Act 1974 was repealed and replaced by a provision that gave powers to the Auckland and Wellington Regional Councils in relation to regional parks and reserves.

The two Councils can each acquire any piece of land for the purposes of a regional park or reserve (s.619(2)). Also, any public body with land vested in it may transfer land to either Council, by agreement, for that purpose.

Any vested land transferred by a public body is held by the regional Council concerned subject to the trusts (if any) affecting the land at the time of transfer (s.619(4)).

This means that if a reserve administering body transfers a public reserve, vested in it, to one of the regional Councils, the land remains subject to the Reserves Act 1977. The existing purpose of the reserve remains its primary purpose. The regional Council concerned becomes the administering body of the reserve under the Reserves Act.

The regional Council concerned has limited additional leasing and licensing powers over a regional park, including any public reserve in the park (s.619(6) or s.619A(3)).

Each regional park requires a management plan. The plan would include any reserves within the park (s.619D). Such reserves would not need to be covered by a management plan under the Reserves Act.

The regional Council concerned only has the power to establish or maintain a botanical garden on any land in a regional park or reserve that is *not* subject to the Reserves Act (s.619(5)).

The Resource Management Act and the Reserves Act

The Resource Management Act (RMA) integrated two main functions from earlier legislation:

- the allocation of water, coastal space and geothermal energy
- the sustainable management of resources.

The purpose of the Act, as set out in s.5 RMA, is "to promote the sustainable management of natural and physical resources".

Key Difference Between the Acts

There is a fundamental difference between the two Acts, which means Councils have different roles under each.

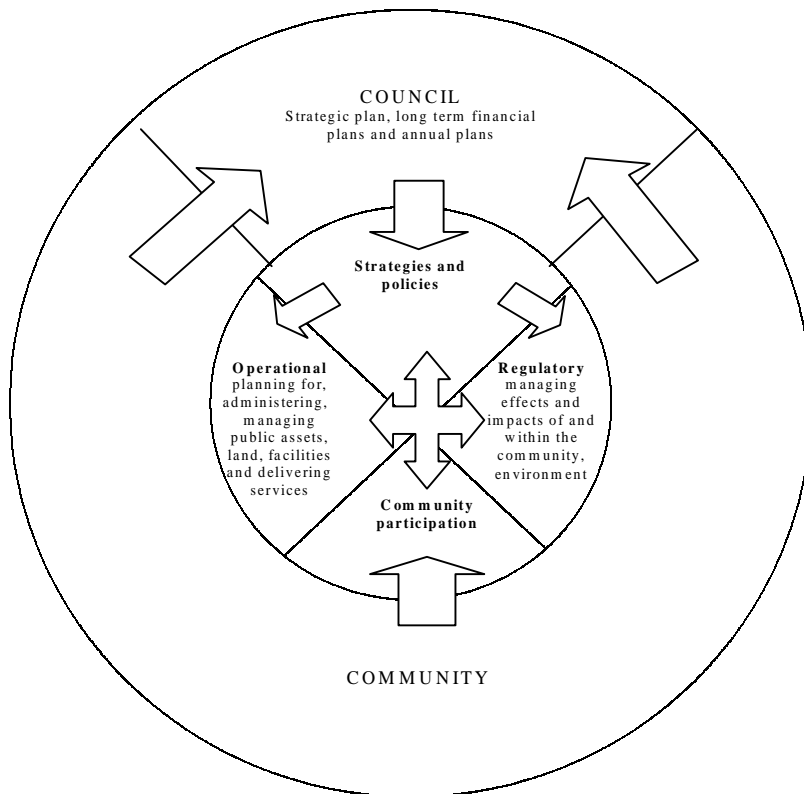


Except in relation to water, coastal space and geothermal energy, the RMA is purely a regulatory tool. In contrast, the Reserves Act contains no regulatory provisions. Instead, it sets out how reserves are to be managed by their administering bodies. However, it should be noted that reserve management plans and other Council policy has weight in consideration of RMA matters.

Council Roles: Regulatory vs Reserves Administering Body

The role of a Council under the RMA is to promote sustainable management of resources. It affects the way people can behave, and controls the effects they (and their property) can have on other people and the environment. RMA functions are generally carried out by the regulatory sections of councils.

As an administering body of a reserve, under the Reserves Act, a Council is concerned with acting on behalf of the owner (whether or not the Council) and beneficiaries of the reserve (the public). The Council exercises reasonable control for management purposes over the activity of its agents and the public on the land. The Council must act in the interests of the owner and beneficiaries. Reserves Act functions are generally carried out by operational sections of councils.



Application of the RMA to Reserves

The RMA may affect reserves in three ways as follows:

- The primary effect of the RMA is to prevent any activities on the reserve from having an adverse impact on adjacent land, the wider community, and the



environment. For example, floodlights on a sports field might adversely affect nearby residents.

- The RMA may also directly result in the creation of reserves, if that is required as a condition of a consent. In particular, esplanade reserves and other forms of reserves may be created on subdivision.
- Planning under the RMA will also provide a context relevant to decisions by a Council about service provision (including provision of reserves), by establishing overall policies on sustainable management. The creation and management of reserves may be one way for the local authority to ensure community outcomes for reserve planning and associated services are met.

Despite the latter effect, the rules in district and regional plans should not be directed to controlling the outcomes provided by reserves where such rules would be inappropriate if applied to adjacent private land. Equally, reserves should not be exempt from rules affecting adjacent private lands.

Although provisions in the two Acts have some similarities (eg covering vegetation, structures, activities), there are also significant differences. However, there will inevitably be a degree of overlap where a Council has to deal with an activity under both Acts.

The way the Council considers these matters, the purpose for which it is considering them, and the final decision, will be different in most cases. The criteria and weighting of criteria on decisions under both Acts will be different. The Reserves Act statutory framework gives emphasis on protection; the RMA emphasises sustainable management.

Application of the Reserves Act to Reserves

The administering body's function is to manage a reserve for the purpose for which it is classified (s.40) (see Chapter 10 "Functions of an Administering Body"). Management duties are to ensure, as appropriate, the use, enjoyment, development, maintenance, protection and preservation of reserves.

Practice Note 3: Accepting Land for Reserve Through Subdivision – Dunedin City's Experience – the Importance of Good Internal Systems

Background

Because the process for transfers of reserves to Council on subdivision crosses the boundaries of the RMA, and the Reserves Act, it also crosses the respective operational and regulatory responsibilities of Council departments who administer these Acts. Usually, once a subdivision resource consent is granted which has as a condition that land is to vest in Council as a reserve, the statutory processes are set and the land will autonomically vest on deposit of the survey plan with Land Information New Zealand.

This post consent processing was not widely known within Council with the result being land vested in Council without the agreed development/ground work being completed. This occurred because the "Reserve" departments were unaware of where and how in the RMA process, they needed to become involved.

**Practice Note Cont'd**

A second issue was the need for statutory and legal clearances for land that is to vest or deposit of the survey plan. With implementation of the Ngai Tahu Settlement Act and s.40 of the Public Works Act in the Dunedin area for some types of land holdings the Council must obtain statutory clearances before the current owner can transfer such land. The "transfer" includes vestings in Council.

The impact of failure to ensure these clearances have been completed potentially involved Council (as the new land owner) in any claim or litigation that could have been taken for non compliance with the Act.

Action Taken

- Checked with Council's Solicitor regarding legality of imposing a condition of consent to cover necessary ground work, development and that any statutory or legal clearances required to allow the land to vest had been completed by the applicant.
- As part of the resource consent process, Reserves staff now ensure that relevant conditions relating to land to vest are forwarded to the RM planner preparing the report for inclusion in the resource consent as a condition of such consent.

Outcome

- Land cannot vest in Council until the necessary works are completed. (Prohibited, as conditions of consent needed to be complied with prior to a certificate under s.224(c) RMA being issued.)
- Reserves staff are now aware of "when" the land ownership is to change. Previously no formal process was set up to advise of this between the two departments – Reserves and City Planning.

What Would You Do Differently Next Time?

- Continue to strengthen relevant resource consent conditions relating to the agreed works for the proposed reserve.
- Produce a standard set of conditions to cover the statutory legal clearances required for all land vesting situations.

Suggestions of Points to Watch

- Ensure that the planner/administrator processing the RMA ss.223 and 224 certificates is aware that the Reserves Department is the appropriate department to advise compliance regarding the conditions of consent in relation to reserves.

Contributed by Judy Milward, Community and Recreation Planning, Dunedin City Council.

