



Checking the Status of Reserves and Recording Information

5.1 Recording of Information about Council Reserves

Knowing the portfolio of land that a local authority manages is a critical component of good reserve and property risk management. Part of building this knowledge is the sometimes onerous task of checking the status of the land held by the local authority for “reserve” purposes. For relatively recent acquisitions, this exercise may be fairly simple. However for land that has been held and managed for many years it may pose more problems – the local authority needs to accurately determine for every reserve it manages, who is the owner of the certificate of title.

This Chapter identifies the importance of determining the status of reserves, both legally and as a matter of good practice. Collating and holding information about reserves is then discussed.

The process of documenting, collating and gathering information about the areas of reserve that a local authority manages will assist with all aspects of administration and processing under the Act.

Three key tasks are necessary to establishing what a local authority manages, where the land is and what provisions of the Reserves Act, if any, apply – or should apply. These tasks are listed below.

What is the Portfolio of Land a Local Authority Administers?

The first task is to establish which areas, of the land that it holds, are subject to the Reserves Act 1977 (see Chapter 1) and the legal description of the land in each reserve.

By doing so, the Council can determine whether or not it must deal with the land under the Reserves Act rather than, for example, the Local Government Act (see Chapter 3).

The Council must also establish whether any of the land held by it under the Reserves Act is subject to the provisions of any:

- will or deed or other instrument creating the trusts on which the reserve is held



- Act (whether passed before or after 1 April 1978) or any Provincial Ordinance (in force at 1 April 1978) making any special provision for the reserve.

The Reserves Act, in its application to any reserve, must be read as subject to the above provisions, unless the Reserves Act¹ specially provides for an exception (s.5).

Reserves established in the period 1853 to 1876 may be subject to Provincial Ordinances. There is no need to check reserves established after 1 November 1876 in relation to Provincial Ordinances only.

Establishing Status of Each Piece of Land

The second task of a Council is to establish facts about the purpose for which each reserve is currently held.

These purposes may have been established by:

- automatic classification (s.16(7) or (11))
- specific classification by notification in the *Gazette* (s.16(1))
- specific classification by Council resolution (s.16(2A))
- the original setting apart or a subsequent change before or after 1 April 1978 (s.16(6)).

It is useful to split reserves in the last category into two groups, namely those which in the future can be classified under s.16(1) and those which can be classified under s.16(2A).

For further information on classification and change of classification see Chapter 8.

Vested or Crown Reserves?

The third task of a Council is to determine which reserves it holds under an **appointment to control and manage** and which ones are **vested** in the Council (see Chapter 10).

With an appointment to control and manage it may be useful to the Council to separately identify those to which s.26A will apply (if not already vested under that provision² – see Chapter 10).

Council Obligation

There is an obligation on a Council to undertake the three tasks in a comprehensive way so that it can properly exercise its functions and duties as an administering body under s.40 (see Chapter 10) and any delegations under s.10 (see Chapter 2 and Appendices 2a, 2b and 2c).

Before the Council exercises a statutory power under the Act in relation to any reserve, it will require some or all of the above information about the land affected. This information need becomes evident, for example, from reading Chapters 6 to 9 of this Guide.



1 An example of such an exception is the classification or change of classification of a reserve by the Minister of Conservation (s.5(2)(b)).

2 A reserve to which s.26A of the Act applies does not vest until the classification is approved and notified in the *Gazette*.

Information held in the databases of other agencies (even where accessible) will not necessarily provide the comprehensive records which a Council will require to meet its responsibilities.

Existing Reserves Database Standards

The standards of any existing reserves database maintained by the Council will be deficient unless its compilation has involved carrying out the above three tasks.

Reliance on a database that is deficient could cause a Council to make decisions which are *ultra vires* (that is, outside or beyond the terms of the proper authority). It could also lead a Council or members of its staff to carry out or allow actions which are illegal.

It could also lead to difficulties in registering documents against the title to the land affected. A Registrar is prohibited (without special authority of law) from registering or otherwise giving effect under the Land Transfer Act 1952 to any dealing with any reserve except in conformity with the trusts upon which, for the time being, the reserve is held (s.112 Reserves Act).

Updating Existing Databases

A Council needs good procedures to keep its basic reserves database current. The procedures will allow for the recording of:

- new reserves or land being added to reserves
- land going out of reserves or reservations being revoked
- classifications
- changes of classification
- appointments to control and manage which become vestings
- vestings which are cancelled
- appointments to control and manage which are revoked.

If the database is deficient (see above), the Council also requires a procedure for remedying those deficiencies.

Notification on the Title of Changes in the Reserves Trust (see page 5)

If a reserve is vested in the Council and not derived from the Crown, the Council must notify the Registrar of any legal alteration, revocation, or substitution of any trust on which the reserve is held (s.112). For “trust” read “purpose” or “vesting”, as appropriate to the context.

The Council must therefore notify (see also the table on page 5/5) all relevant:

- resolutions under s.14
- exchanges (s.15)
- classifications (s.16)
- reserve revocations (s.24)
- changes of purpose (s.24)
- cancellations of vestings (s.27)



- road dedications (s.111).

Failure to carry out this obligation may lead to problems when the Council subsequently lodges other documents for registration against the title.

For actions put into effect by notice in the *Gazette*, notification to the Registrar is undertaken by lodging a copy of the *Gazette* notice for the Registrar to register.

A Council may contract out document registration to a commercial agency. If it undertakes registration itself, a legal officer would normally carry that out.

Recording Other Interests Related to Council Reserves

There are three categories of interests in land, namely those which:

- run with the land (eg an easement over private land providing access to a reserve)
- the land is subject to (eg concessions granted over the reserve)
- are held by the Council as conservation covenants under s.77 Reserves Act.

Other interests which may need to be recorded if they come within the Council's responsibilities are:

- access arrangements over vested reserves to the holders of minerals permits under the Crown Minerals Act 1991
- arrangements with Council (as administering body) to control and manage land that is not a reserve (s.38 Reserves Act)
- agreements by Council (as administering body) with landowners under s.85 Reserves Act.

The above information, where applicable, will complete the Council's Reserves Act database.

Assistance from the Department of Conservation

The Department's land records will not necessarily cover all the information that a Council will require. They are likely to be deficient in areas such as:

- reserves created on subdivision
- land acquired by Council as reserve
- classification changes undertaken by Council resolution
- reserves affected by local authority re-structuring

- reserves created before 1 April 1987 which were not recorded by the Department of Lands and Survey.

Council staff can gain access to the Department’s land records as public records.

The Department will charge for providing land information if:

- more than 1 hour of staff time will be spent actioning the request
- more than 20 A4 pages will need to be copied.

If the Council wishes the Department to certify any information as correct, then the time taken to verify any record will also be included in assessing any charges.

In rare cases, a certificate of title for land in a reserve for which a Council is the administering body might not state the purpose of the reserve. In those cases the Department will (at Council request) lodge a Commissioner’s certificate for registration by the Registrar (s.116(6) Reserves Act).

If the Crown has failed to notify the Registrar of any transaction to which s.112 Reserves Act applies, then the Department will (at Council request) give such a notification free of charge. Any request should be sent to the Department’s local conservancy office.

The respective responsibilities for notifying the Registrar are shown in this table:

If the land was ...	then the responsibility to notify the Registrar rests with ...
set apart or reserved by the Crown as reserve	Director-General of Conservation
set apart as reserve on subdivision and vested in local authority	local authority
Declared to be reserve under s.14 Reserves Act by the local authority	local authority
Otherwise acquired by the local authority as reserve eg Public Works Act 1981.	local authority.

Standards for Legal Description of Land

Land Information New Zealand is responsible for standards associated with the legal description of land.

The appellation of land needs to be in accordance with Land Information New Zealand’s official records, being the Survey Data Index (SDI) or it’s equivalent in the core record system (CRS) or the current title.



The Office of the Chief Crown Property Officer has produced a standard for undertaking legalisation actions. CCPO Standards and Guidelines 16 sets out the requirements for the legal description of land. In particular Appendix C of these standards has an overview and examples of descriptions from Gazette Notices that can be adapted to any actions taken under the Reserves Act.

In addition a new standard for graphic descriptions has been prepared. This provides better guidance to Chief Surveyors in discussing plan requirements eg determining what sort of plan will be acceptable on a case by case basis.

These standards can be found by going to Land Information New Zealand's web site at www.linz.govt.nz and then going to "publications", "Crown Property Standards and Guidelines", "Volume 4, Standard 16, Legalisation".

5.2 Checking the Status of Reserves

Primary Sources of Documentation

The primary sources of documentation about the status of reserves are:

- the *Gazette*
- certificates of title
- statutes.

These sources are described below.

Gazette

The *Gazette* is a weekly publication of the Department of Internal Affairs. It is the main source of notified land transactions of the Crown. It includes statutory notices by or on behalf of Ministers, Orders in Council and Proclamations. Each edition is numbered. A "*Gazette* reference" may include that number, but will always have the year of publication and the number(s) of the page(s) on which the particular transaction appears (eg 1991 page 237).

With a year and page reference for the reserve land concerned the *Gazette* can be used to find out:

- whether the reference is a correct one for the land
- the type of, and statutory authority for, the transaction covered by the notice
- the legal description of the land covered by the notice (but note that it may have subsequently been changed)
- who approved the transaction
- the date of approval
- the date of publication (ie the effective date of the transaction).

It may also be possible to find in the notice the then name of the reserve.

A *Gazette* reference or references for the land may be found in the records of the Council, the Department of Conservation (DOC) or Land Information New Zealand (LINZ). This reference may not always be complete, or necessarily totally accurate, because of human error. Verification, by searching the actual notice, is essential if errors are not to be compounded.

A single reference may not be a complete reference for a reserve. For example, there may be separate *Gazette* references for:

- different parcels of land forming part of the reserve
- classification of the reserve
- vesting of the reserve or appointment to control and manage (or cancellation or revocation thereof)
- change of purpose of the classification
- addition of land to a reserve
- partial revocations (land coming out of a reserve).

It is important to know all the references for the above (if they apply) for a complete status check of a reserve.

Bound copies of the weekly *Gazette* may be found in some LINZ and DOC offices. They go back to the 1800s. Copies will also be held in the General Assembly Library and probably in District Law Society libraries.

Relevant extracts from the *Gazette* may also be registered against the certificate of title for the land, if one exists.

Certificate of Title

Certificates of title are provided subject to the provisions of the Land Transfer Act 1952 (LTA). The certificates are held in the Land Titles Services branches of LINZ, for the registration districts concerned (s.3 LTA). Such titles include all land vested for an estate in fee simple in possession by virtue of any Act (s.10 LTA)

While all privately owned land and many vested reserves are held under certificates of title, that is not true of all land of the Crown or some land held in Maori ownership.

A right cannot be acquired, or deemed to be acquired, over any title to a reserve otherwise than as authorised by law (s.77 LTA). For example, a reserve may not be transferred (s.129(4) LTA) except where there are special legislative provisions (eg s.619 Local Government Act).

Registrars are prohibited from dealing with any reserve except in conformity with the trusts upon which a reserve is for the time being held (s.112(1) Reserves Act). The administering body which holds the certificate of title to a reserve must hold the land subject to the trusts expressed or declared in the title or instrument from which it is derived (s.129(1) LTA).

A process is provided in s.26A(3) Reserves Act for a territorial authority to have a certificate of title issued for a reserve vested under s.26A(1). This will enable documents to be registered against that title.



The registered copy of a title can be searched at the relevant Land Titles Office (LINZ). Each Council (or its solicitors) will hold the duplicate copy of a certificate of title over a vested reserve if one exists in the Council's name. The duplicate copy is provided to the Registrar for cancellation when a vesting is cancelled.

A title may be issued for a reserve vested in the Crown (s.116(1) Reserves Act) but no duplicate title is issued (s.116(3)). The duplicate title is cancelled for any private land acquired by the Crown (s.116(4)). Such titles are to show the purpose of the reserve (s.116(6)). A title to a revoked Crown reserve can be cancelled (s.116(9)).

Each title has a Volume and folio reference; cited together as the "C.T. reference" with a bar in between: eg 3C/1079. *Gazette* notices registered against the title will have their own registered number recorded on it and will not be recorded by year or page. The registered document can be searched for those details.

A certificate of title shows:

- whether the C.T. reference is the correct one for the land in the reserve (NB there may be more than one title) eg for different parcels of land within a reserve
- which person or body holds the title and how the vesting came about
- the legal description of the land in the title
- the purpose of the trust (ie of the reserve).

Note that the information in a title may be imperfect if there has been a failure to comply with notification of changes (see Chapter 5).

Also, the requirement of the title to be subject to the Reserves Act, or earlier Acts, may not have been brought down on to the latest title from the previous title(s) for the land. A proper title search will involve going back to the first title for the land – and even to the source document on which the first title was based – to find out if the land is a reserve or not subject to the Reserve Act 1977, and how it became a reserve (see Chapter 1).

Source document(s) for a title, or the title itself, and previous titles should reveal references to, and terms of, any will or deed or other instrument creating the trusts on which a reserve is held. They may also hold a reference to any Act or Provincial Ordinance making any special provision for the reserve (see Chapter 5).

Statutes

Both public and local Acts may affect the trusts upon which a reserve is held.

The primary public Act is the Reserves Act 1977 (see Chapter 1). Other public Acts may affect the trusts upon which a reserve is held. (Examples include the Reserves and Other Lands Disposal Acts.)

Local Acts are usually promoted by a local authority. An example is the Auckland City Endowments and Reserves Act 1875 or the Wellington City Townbelt Reserve Act 1908.

Practice Note: Section 5(2)(b) Reserves Act Trusts

Land status under the Act is not always clear cut. Various local Acts may affect the status of the land. In Wellington City, the prime example is the “Town Belt and Basin Reserve Deed 1873” which was made under the provisions of the Wellington City Reserves Act 1871. These instruments set up and established the Wellington Town Belt and the Basin Reserve as major public recreation resources for the new City of Wellington³.

The Wellington Town Belt Deed demonstrates another layer of obligations over land which has been managed historically for public use for many years. The Deed stated that the Town Belt was to be used “as a public recreation ground for the inhabitants of the City of Wellington” and “for such purposes of public utility to the City of Wellington and the inhabitants thereof as shall be expressed and declared”. The Deed further provided that:

- a) the Council has no power to alienate or dispose of the land
- b) no thoroughfare be created across the land
- c) the Council has power to lease all or any part of the land for a term not exceeding 42 years, the best rent to be payable during this term.

The Deed has shaped the management of the Wellington Town Belt and the community has taken great pride in the foresight of the settlers of Wellington.

Originally, on settling Welling in the 1840s, the Crown intended to reserve approximately 625 hectares of land as Town Belt. The amount granted to the Superintendent of Wellington in 1861 reduced the Town Belt to 500 hectares and by the time the Town Belt Deed was signed in 1873, the Town Belt was only 432 hectares.

Today there is approximately 425 hectares of land managed as part of the Wellington Town Belt. Most land is subject to the Deed and some 37 hectares is not – which includes the Botanic Gardens and Show Grounds. These latter areas also have their own Local Acts which guide aspects of management. However, while this 37 hectares is not legally held by the Council subject to the 1873 Town Belt Deed, the general intent and purposes of the Deed are generally applied to their management as part of the Wellington Town Belt.

The Wellington Town Belt is a reserve within the meaning of the Reserves Act 1977. The provisions of the Reserves Act apply subject to the provisions of the 1873 Deed which created the Trusts on which the Wellington Town Belt is held (s.5(2) Reserves Act).

In the preparation of the Wellington Town Belt Management Plan in 1994-5, many anomalies were “discovered” in respect to the legal status of parts of the land. These had to go through a full legal search of titles and discussions with bodies such as Land Information New Zealand to verify the actual status of each parcel of land and what “Trusts” existed, still exist, and have been extinguished.

Examples of anomalies included:



3 The history of the Wellington Town Belt is summarised in Wellington City Council’s “Wellington Town Belt Management Plan”, 1995.

**Practice Note Cont'd**

- land that was regarded and managed as Town Belt but was not legally held subject to the 1873 Deed
- land that had previously been excluded from the Town Belt and/or developed in some other way (eg as roads) that had not formally been excluded from the Town Belt on Certificates of Title
- small "severance areas" left after other land was alienated for say, a road, still remained with the Town Belt. This land no longer looks as it is part of the Town Belt and should also have been removed from the Town Belt at the time the development took place.

To rectify these anomalies the Wellington City Council will have to pass special legislation and through it carry out a significant amount of boundary surveying to make adjustments to certificates of title.

As part of its Town Belt Management Plan, the Council has a policy to recover as much of the original land identified for Town Belt as is reasonably possible, that was allocated in 1841. Land identified for return includes land currently held by the Crown, or has been transferred to State Owned Enterprises or other entities by the Crown. This is a very long term project.

Compiled from extracts from the Wellington Town Belt Management Plan, courtesy of Wellington City Council.

